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In The

Supreme Court of the United States

WILLIAM F. WENDT, Jr.,
Petitioner, Pro Se

v.

NORMAN MINETA, Secretary,
United States Department of Transportation,
Respondent

On Petition for Writ of Certiorari
To the Seventh Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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ISSUES PRESENTED

Whether the petitioner is entitled to summary judgment on the strength of this document alone, that the program in question here is unconstitutional, based on

1) the government's own description in the trial court of a federal program under Title 49, United States Code, Chapter 53, to fund local projects,

2) references in that chapter to local projects, local authorities, local decision-making, etc., and

3) United States v. Butler, 297 U.S. 1, 63-67, holding that the federal government does not have the authority under the Taxation and Appropriation Clause, Art. I, ¶8, to fund local projects.

Whether the petitioner has standing to bring a taxpayer's action under Flast v. Cohen, 392 U.S. 83, 102-103, and the specific prohibition of Butler.

Whether a constitutional challenge to the program authorized by Title 49, United States Code, Chapter 53, in general providing 80% federal funding of local projects, can be dismissed as a political question without at least addressing the objections that it debases and corrupts the political process well beyond effectual recourse; whether local decision-making at federal expense imposes taxation without representation; and whether informed decision making is an indispensable part of the political process, but impossible for taxpayers liable for funding local projects on a national basis.

Whether 1) "treason to the constitution" is committed, per Cohens v. Virginia, 6 Wheat. (19 U.S.) 264, 404,

2) the bench commits a legislative act,

3) the law is nullified,

4) an hypothetical jurisdictional bar is erected,

5) finality in litigation is vitiated, and

6) the lower court proceedings are rendered void,

by appellate court exercise of raw, unbridled, pseudo-judicial power to summarily affirm a trial court denial of a Rule 60(b) motion, the denial affirmed on no stated reason except an unexplained inability to raise issues

and lack of desire for further briefing, with no finding of appropriate disposition, apparently but not expressly on the prohibition of attacking the underlying judgment in denial of a Rule 60(b) motion, while leaving unaddressed on trial and review jurisdictional questions and constitutional issues so far undisputed on both fact and law, under circumstances creating the appearance of a coerced court, the trial court denial that in so many words, in open court,

1) ignored direct questions of the underlying judgment being beyond court power,
2) admitted its own failure to address questions for lack of time,
3) referred unaddressed matters to the appellate court, and
4) said the record was complete for appeal,

the motion having attacked the underlying judgment as clerical error, void for lack of notice, and void for ruling in excess of court power; whether such failure of the courts also is an abandonment of judicial function and immunity, creates a jurisprudence of fiat, not reason, denies any meaningful right to sue and inflicts a badge of slavery, and threatens all other rights.

Whether the "day in court" required by due process includes application of all applicable law, and needs to be defined as such by this Court.

Whether the underlying trial court judgment is void for lack of notice; whether the portion of FRCP 77(d) holding lack of notice does not affect time to appeal violates the requirements of due process.

Whether the purpose of FRCP 60, that judgments may reflect the true merits of the case (Serio v. Badger Mutual Insurance Company, 266 F.2d 418, 421), is utterly defeated by cryptic application of the prohibition against attacking the underlying judgment on appeal of the denial of a Rule 60(b) motion when 1) the motion attacked the underlying judgment as void, 2) Wages v. I.R.S., 915 F.2d 1230, 1234 (9th Cir. 1990) reviewed an underlying judgment attacked as void under Rule 60, and 3) it

constitutes a procedural default without regard to fundamental fairness and a pointless slamming of the courthouse door; whether there are conflicts between Burke v. Smith, 252 F.3d 1260, 1263 (11th Cir. 2001) and Blaney v. West, 209 F.3d 1027, 1031 (7th. Cir. 2000) on the standard of review of void judgments.

Whether city dweller Wendt has standing to bring an environmental action on urban issues.

Whether the purpose of the National Environmental Policy Act, informed decision making, is a constitutional duty of the government as agent to the people as principal, one not subject to arcane technical requirements, and enforceable beyond the limits of the Act.

Whether the petitioner's right of access to the courts has been restricted by a case overload caused by the failure of the courts to declare overly complicated, overly Hamiltonian laws unconstitutional; whether this case should be given priority over those seeking to enforce such laws.

Whether this Court can afford to leave the appearance of a coerced court in the summary affirmance of the trial court order.

Whether failure to answer questions of ultra vires conduct, including those from a previous case, is itself beyond judicial power, and requires at least the disqualification of the judges; whether the members of this Court are at least technically disqualified for failure to answer questions of ultra vires conduct in the petitioner's previous case, Wendt v. University of Illinois, et. al., 00-325; whether such gross abuse or excess of discretion limits this Court's discretion and makes certiorari mandatory.

Whether Wendt's previous case in this Court, Wendt v. University of Illinois, et. al., 00-325, ought to be reopened on grounds of ultra vires conduct, in particular an hypothetical jurisdictional bar.

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TABLE OF CONTENTS

CITATIONS	1
JURISDICTIONAL STATEMENT	1
CONSTITUTIONAL PROVISIONS AND STATUTES	1
STATEMENT OF THE CASE	1
REASONS FOR GRANTING THE WRIT	4
A. Federal Funding of Local Projects Unconstitutional	4
B. Taxpayer Standing to Challenge Federal Funding of Local Projects; Summary Judgment Supported	6
C. Debasement of Political Process by Federal Funding of Local Projects	7
D. Lower Court Rulings Void	10
E. Day In Court In Need of Definition	21
F. Federal Rules of Civil Procedure 60, 77(d)	23
G. Quality of Urban Life Justiciable Question	25
H. Constitutional Duty for Informed Decision Making	25
I. Access to Court Infringed by Unconstitutional Laws	26
J. Appearance of a Coerced Court	28
K. Disqualification of Judges; Reopening of Previous Case; Mandatory Certiorari	29

TABLE OF AUTHORITIES

Cases

American Ry. Express Co. v. Commonwealth of Kentucky, 273 U.S. 269, 273	22, 30
Anastasoff v. United States, 223 F.3d 898(8th Cir. 2000)	13-14
Baltimore Gas and Elec. Co. v. Natural Resources Defense Council, Inc., 462 U.S. 87, 97	12
Bartlett v. Bowen, 816 F.2d 695 (D.C. Cir. 1987)	21-22
Bass v. U.S. Dep't of Agriculture, 211 F.3d 959, 963	23, 24
Billington v. Underwood, 613 F.2d 91, 95	22
Blaney v. West, 209 F.3d 1027, 1031 (7th. Cir. 2000)	24
Browder v. Director, Department of Corrections of Illinois, 434 U.S. 257, 264	24
Burke v. Smith, 252 F.3d 1260, 1263 (11th Cir. 2001)	24, 30
Chambers v. Baltimore & Ohio, 207 U.S. 142	14-15, 28
Civil Rights Cases, 109 U.S. 3, 22	16
Cohens v. Virginia, 6 Wheat. (19 U.S.) 264, 404	11-12

Coleman v. Thompson, 895 F.2d 139, 144 (4th Cir. 1990), affirmed in principle, 501 U.S. 722, 757 25
Commonwealth of Massachusetts v. Mellon, 262 U.S. 447, 487 7
Crichfield v. Bermudez Paving Co., 174 Ill. 466, 481, 51 N.E. 552, 557 8
District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 477 10, 29
Dred Scott v. Sandford, 60 U.S. (19 How.) 393 12
Evans v. Gore, 253 U.S. 245, 250-251 16-17
Flast v. Cohen, 392 U.S. 83, 102-103 6, 7, 12
Florida Audobon Society v. Bentsen, 94 F.3d 658, 669 (DC Cir. en banc, 1996) 12
Galpin v. Page, 18 Wall.(U.S.) 350, 368-369, 21 L.Ed. 959 23
Gregg v. Furman, 428 U.S. 153, 199 n50 15
Helvering v. Davis, 301 U.S. 619, 644 8
Jones v. Alfred H. Mayer Co., 392 U.S. 409, 441 16
Lake County v. Rollins, 130 U.S. 662, 673 21
Lord v. Kelley, 240 F. Supp, 167, 169 28-29
Lujan v. Defenders of Wildlfe, 504 U.S. 555, 572, n7 10, 25
Marbury v. Madison, 1 Cranch. 137, 177, 178-179 12, 15, 21, 22
Marshall v. Jerrico, Inc., 446 U.S. 238, 243 29
McCarthy v. Madigan, 503 U.S. 140, 146 13
Nucleus of Chicago Homeowners Ass'n v. Lynn, 524 F.2d 225, 229 12, 25
Oregon Env'n. Cncl. v. Kunzman, 817 F.2d 484, 492 9, 12
Painter v. Shalala, 97 F.3d 1351, 1359 (10th Cir. 1996) 21-22
Pullman, Inc. v. Volpe, 337 F.Supp. 432(E.D. Pa. 1971) 4, 8
Recreational Properties v. Southwest Mortg. Service, 804 F.2d 311, 314 (5th Cir. 1996) 23
Salve Regina College v. Russell, 499 U.S. 225 (1991) 29
Serio v. Badger Mutual Insurance Company, 266 F.2d 418, 421 (5th Cir. 1959) 24
Sierra Club v. USDOT, 962 F. Supp. 1037 (N.D.Ill. 1997) 25
Sims v. Lucas, 9 F.3d 1293, 1294 18
Slaughterhouse Cases, 83 U.S. (16 Wall) 36 (1873) 16
South Dakota v. Dole, 483 U.S. 203, 211 7, 9
State Bar of Nevada v. Claiborne, 104 Nev. 115, 756 P.2d 464 (1988) 29
Steel Co. v. Citizens for a Better Envmt., 523 U.S. 83 11, 13

Testa v. Katt, 330 U.S. 386, 394 22
Tool Co. v. Norris, 2 Wall. 45 8
United States v. Boch Oldsmobile, Inc., 909 F.2d 657, 661 (1st Cir. 1990) 24
United States v. Butler, 297 U.S. 1 1, 2, 5-7, 10, 12
United States v. Cheek, 498 U.S. 192, 199-200 27
United States v. Datcher, 830 F. Supp. 411 15
United States v. Funches, 135 F.3d 1405, 1408 15
United States v. Graves, 98 F. 3d 258, 260 (7th Cir. 1996) 15
United States v. Krzyske, 836 F.2d 1013, 1021 15
United States v. Moylan, 417 F.2d 1002, 1006 15
United States v. Ramsey, 785 F.2d 184, 188-191, 7th Cir. 28
United States v. Ruiz, 47 F.3d 452, 455 (1st Cir. 1995) 15
United States v. SCRAP, 412 U.S 669, 687 12
Valley Forge Christian College v. Americans United, 454 U.S. 464 7 (dissent), 29
Vasquez v. Hillery, 474 U.S. 254, 265-266 12-13, 19
Wages v. I.R.S., 915 F.2d 1230, 1234 (9th Cir. 1990) 24
Wassall v. DeCaro, 91 F.3d 443, 446-447 (3rd Cir. 1996) 26
Wilson v. Layne, 141 F.3d 111, 124n6 (dissent) 27
Wolf v. McDonnell, 418 U.S. 539, 558 22

Other

Article I, §8, United States Constitution 5-10
Article III, §2, United States Constitution 10-21
Black, The People and the Court 18, 26
Blackstone, Commentaries 13, 19-20
Carpenter, The No-Citation Rule for Unpublished Opinions: Do the Ends of Expediency for Overloaded Appellate Courts Justify the Means of Secrecy?, South Carolina Law Review, 50:234 27-28
Civil Rights Acts of 1866 and 1870 16
FRAP 4(a)(6) 23
FRCP 60 23-25
FRCP 77(d) 23-24
Federalist 41, 45, 46 6
Federalist 62 8, 26-27
Federalist 73, 79 8
Federalist 78 13-14, 25
Fifth Amendment 21-24
Forbes, "Justice in the Dark," October 28, 2000 28

49 U.S.C. 5301 et.seq. 30
49 U.S.C. 5301, 5307, 5309, 5324(c) 4, 5
49 U.S.C. 5307(e) 8, 9
49 U.S.C. 5301(b)(1); 5301(f)(3); 5301(f)(4); 5302(a)(6); 5302(a)(12); 5303(c)(1)(A); 5303(c)(1)(B); 5303(c)(4)(B)(1); 5303(c)(5)(A); 5303(c)(5)(B); 5307(a)(2)(A); 5309(a); 5309(e)(2)(C); 5309(e)(4)(c); 5309(e)(4)(C)(ii); 5309(e)(4)(C)(ii); 5309(e)(4)(D); 5310(a)(1); 5311(a); 5323(a)(1); 5323(e) 5
Frank, Courts on Trial: Myth and Reality in American Justice 15-16
Mallen and Levit, Legal Malpractice, Second Edition 28
Martin, In Defense of Unpublished Opinions, 60 Ohio State Law Journal 177 27
NEPA 42 U.S.C. 4332 9, 12, 26
Rembar, The Law of the Land: The Evolution of Our Legal System 19
Roberts and Stratton, The Tyranny of GoodIntentions: How Prosecutors and Bureaucrats are Trampling the Constitution in the Name of Justice 20-21
Story, Commentaries on the Constitution of the United States 14, 17-18
Supreme Court Rule 10 30
Tocqueville, Democracy in America 18
Thirteenth Amendment 16

CITATIONS

1. The orders of the 7th Circuit Court of Appeals (01-2709) and of the District Court for the Northern District of Illinois (00 C 0577) are unpublished.

JURISDICTIONAL STATEMENT

2. The panel order was issued on November 20, 2001. The order denying a "motion for reconsideration" was issued January 28, 2002.

3. This Court has jurisdiction of this matter under 28 United States Code 1254(1) under this petition, and 28 United States Code 1254(2), in that the 7th Circuit constructively certified the matter by failing to even mention the jurisdictional arguments or any other issue.

CONSTITUTIONAL PROVISIONS AND STATUTES

4. Art. I, §8 Taxation and Appropriation Clause; Art. III, §2; Fifth Amendment; Thirteenth Amendment; Civil Rights Acts of 1866 and 1870; 42 United States Code 4332 (National Environmental Policy Act); 49 United States Code 5301 et. seq.; Rule 10 of this Court (16a)

STATEMENT OF THE CASE

5. On January 28, 2000 Wendt filed a complaint against then Secretary of Transportation Rodney Slater, alleging, first, the federal program for funding public transportation projects is beyond the power of Art. I, §8 of the United States Constitution, in violation of the specific prohibition of United States v. Butler, 297 U.S. 1, and, second, that piecemeal reconstruction of public transportation systems without analysis of alternatives violates the purpose of 42 United States Code 4332 (National Environmental Policy Act, or NEPA), informed decision making. The jurisdiction of the trial court was invoked under 28 United States Code 1331, 28 USC 1361, and 5 USC 701. It described an ignored monorail technology that could provide considerably more transportation at considerably less financial and environmental cost than currently used technologies being replaced in kind.

6. The government moved to dismiss April 26, 2000, arguing lack of standing for taxpayer action and

failure to allege environmental injury. It described a federal program for funding local transit projects, under which local authorities make the principal decisions. It made no attempt to show any analysis of alternative transportation technologies.

7. Wendt moved for disqalification of the judge May 25, 2000 on grounds of former membership in a law firm Wendt sued in another case.

8. Wendt objected to dismissal on June 16, 2000.

9. The government replied to objections on July 7, 2000, largely repeating previous argument, but seeking to restrict Butler to taxes imposed on farmers. Again, it made no attempt to show any analysis of alternatives.

10. Wendt moved for summary judgment on July 21, 2000, citing the government's own description of the federal program for funding local projects, to show the program unconstitutional under Butler, 63-67, and its silence to show a lack of informed decision making.

11. The motion for summary judgment was denied on August 17, 2000 without prejudice.

12. The motion to dismiss was granted, on September 14, 2000, judgment entered September 19. The trial court dismissed for lack of standing and jurisdiction, holding Wendt had not proven his jurisdictional facts, he could not prove final agency action, and the matter a political question. (2a)

13. Wendt moved to alter or amend the judgment October 2, 2000, on grounds he did not have to prove jurisdictional facts in the pleading stage, even if he had out of the other side's pleadings, that there had to be final agency action somewhere along the line, that the quality of urban life is a justiciable issue, and that he cited a specific prohibition on the use of federal funds upon which he could claim standing as a taxpayer.

14. The motion was taken under advisement October 5, 2000, the trial court acknowledging Wendt had proven his jurisdictional facts in the pleading stage.

15. The motion to alter or amend was denied in open court on October 12, 2000, the matter still held a

political question, but a minute order was promised. (7a)

16. Wendt moved for relief from purported judgment on April 6, 2001, arguing clerical error, denial of due process for lack of notice, void judgment, disqualification of judge, and overloaded courts due to unconstitutional laws. It also added a motion for recusal the same judge granted in another transportation case.

17. The motion for relief and recusal was denied in open court May 3, 2001, the trial court still holding the matter a political question and being unresponsive to Wendt's allegation of ultra vires action. (10a)

18. The notice of appeal was filed on June 28, 2001

19. On July 20, 2001, Wendt filed motions for remand under Circuit Rule 50 for failure to give reasons, to disqualify 7th Circuit judges for ultra vires conduct in Wendt's previous case and to reopen it, and for priority over cases enforcing unconstitutional, overly Hamiltonian laws, plus a petition for *en banc* consideration.

20. On August 13, 2001 the pleadings were denied without reason given by Circuit Judge William Bauer.

21. On August 20, 2001 Wendt was issued an order to show cause why he had not filed a brief on time.

22. On September 4, 2001 Wendt filed a response, largely that his motions were still pending when the brief was originally due.

23. On September 6, 2001 the court set a briefing schedule.

24. On October 9, 2001 Wendt filed his brief.

25. On November 7, 2001 the government filed a motion for summary affirmance, naming the new Secretary of Transportation as defendant, on grounds Wendt could not attack the underlying judgment on a denial of a Rule 60 motion. (18a)

26. On November 16, 2001 Wendt filed a response offering three separate reasons for rejecting the government's motion and wondering, if the government had nothing on the table, what it had under the table, such as a coerced court. (23a)

27. On November 20, 2001 the court summarily

affirmed the trial court order, but still named the previous Secretary as defendant. (1a)

28. On January 3, 2002 Wendt filed a petition for rehearing *en banc* arguing no appellate deliberation, appearance of coerced court, ignoring of constitutional issues, no day in court, no res judicata, abandonment of judicial immunity, and invitation of scandal. (33a)

29. On January 28, 2002 a "motion for reconsideration" was denied without reason given. (15a)

REASONS FOR GRANTING THE WRIT

A. Federal Funding of Local Projects Unconstitutional

30. In the trial court Slater boasted of an ongoing, longstanding federal program to fund local projects, the factual basis upon which Wendt can rest his case, regardless of any defects in the complaint. Introducing his memorandum in support, Slater argued,

"Chapter 53 of Title 49 authorizes the Secretary of Transportation to make grants or loans to assist states and local agencies in financing the planning, development, and improvement of mass transportation facilities. 49 U.S.C. 5301. Under various sections of the statute, Congress makes funds available for capital and operating assistance in support of local mass transportation programs. See, e.g., 49 U.S.C. §§ 5307 and 5309. The statutory program is administered by the Federal Transit Administration ("FTA"). 49 U.S.C. 5301. The aim of the statute is to assist localities in solving their transit problems. FTA provides federal financing to local transit systems. See, e.g., Pullman, Inc. v. Volpe, 337 F. Supp. 432 (E.D. Pa. 1971). FTA provides federal financing to local transit systems, which are entrusted with making decisions on the details of projects that received federal funding under Chapter 53. Id. at 438-439."

31. Slater further argued, memorandum,

"...Wendt complains that RTA, CTA, and METRA have used federal funds for the rehabilitation of Chicago's transit system when he would prefer that the entire system be scrapped in favor of a monorail.

Complaint, ¶¶4, 15-19 But Wendt fails to specify how any action by the Secretary of Transportation has any bearing on this issue. In fact, Wendt himself acknowledges that it is the RTA that has considered and rejected the alternative transit systems that he prefers. Complaint, ¶14." and, memorandum,

"The FTA, however, is involved only in funding on a project-by-project basis. Moreover, the agency cannot legally interject itself in local decisionmaking. 49 U.S.C. §5324(c)...,"

32. In grossly misstating Wendt's case, Slater did show "local" decision-making, memorandum,

"...in essence, Wendt asks this Court to order the defendant to order the RTA to investigate alternative mass transit systems- and to do so simply because Wendt is an aficionado of the monorail."

33. At least there is no dispute that the projects in question are local. Beyond Slater's argument, Title 49, United States Code, Chapter 53 refers to local projects or local governmental authorities administering projects in the following sections:

5301(b)(1); 5301(f)(3); 5301(f)(4); 5302(a)(6); 5302(a)(12); 5303(c)(1)(A); 5303(c)(1)(B); 5303(c)(4)(B)(1);5303(c)(5)(A); 5303(c)(5)(B); 5307(a)(2)(A); 5309(a); 5309(e)(2)(C); 5309(e)(4)(c); 5309(e)(4)(C)(ii); 5309(e)(4)(C)(ii); 5309(e)(4)(D); 5310(a)(1); 5311(a); 5323(a)(1); 5323(e)

34. There is a specific constitutional prohibition on federal funding of local projects. After extensive discussion, based largely on Story's commentaries, Hamilton's report on manufactures, and a comment by James Monroe, United States v. Butler, 297 U.S. 1, 63-67, held federal funding of national projects to be constitutional, but not those of merely local scope. It concluded,

"As Story says: 'The Constitution was, from its very origin, contemplated to be the frame of a national government, of special and enumerated powers, and not of general and unlimited powers.'

"Again he says: 'A power to lay taxes for the common defence and general welfare of the United States is

not in common sense a general power. It is limited to those objects. It cannot constitutionally transcend them.'

"That the qualifying phrase must be given effect all advocates of broad construction admit. Hamilton, in his well known Report on Manufactures, states that the purpose 'must be general, and not local.' Monroe, an advocate of Hamilton's doctrine, wrote: 'Have Congress a right to raise and appropriate the money to any and to every purpose according to their will and pleasure? They certainly have not.' Story says that if the tax be not proposed for the common defense or general welfare, but for other objects wholly extraneous, it would be wholly indefensible upon constitutional principles. And he makes it clear that the powers of taxation and appropriation extend only to matters of national, as distinguished from local welfare."

35. The dissent agreed at 87, "... *The power to tax and spend is not without constitutional restrictions. One restriction is that the purpose must be truly national...*"

36. If Butler construed the taxation and appropriation power to be broader than the specific grants of power elsewhere in Art. I, §8, it also construed a specific prohibition. In other words, this is a specific prohibition against expenditures of a local nature, as specific as against an establishment of religion.

37. Federal expenditures for local projects are entirely constitutional in the capital district and on federal reservations, where Congress has plenary powers and where expenditure of public monies would remain under federal control. Under the limited federal role envisioned in Federalist 41, 45, and 46, however, they are not.

B. Taxpayer Standing to Challenge Federal Funding of Local Projects; Summary Judgment Supported

38. Wendt claims standing as a taxpayer, that Butler's specific prohibition of federal funding of local projects fulfils the requirement in Flast v. Cohen, 392 U.S. 83, 102-103. Butler further proclaims at 68 that there is no place else for the citizen to urge the law exceeding the limits of granted power than the courts, and if it

does, it is the duty of the court to so declare. Thus, between the specific prohibition in Butler, Butler's authorization of court action when limits of power are exceeded, and standing based on specific prohibition in Flast, Wendt has a compelling, justiciable argument, that the appropriations in question are unconstitutional.

40. The dissent to Valley Forge Christian College v. Americans United, 454 U.S. 464, 490, is largely a condemnation of slamming the courthouse door on threshold questions while avoiding substantive matters. At 507-508 it expounds on the Flast "nexus" test, footnote 18 holding at length that if Flast deals only with the Establishment Clause, nothing in its language limits the prohibition to that Clause. Thus Wendt presents sufficient law and fact to support summary judgment.

C. Debasement of Political Process by Federal Funding of Local Projects

41. If the taxpayer's interest is too diffuse for the judicial process, per Commonwealth of Massachusetts v. Mellon, 262 U.S. 447, 487, it is much more so for the political process. It is a poor match indeed for the concentrated interests of the tax recipients. If Flast, 392 U.S. at 103-104, can see even minute tax payments as a violation of freedom of religion, Wendt's injury then goes far beyond extraneous tax payments, to a debased, pork barrelling, boondoggling political process, based on *"spend ourselves rich"* and *"something for nothing."*

42. Federal funding has its judicially recognized effect on the political process. South Dakota v. Dole, 483 U.S. 203, ruled a 5% share of federal funding for highway projects can be conditioned on federal drinking age standards without violating state sovereignty, holding at 211, *"Were South Dakota to succumb to the blandishments offered by Congress and raise its drinking age,"* no one's constitutional rights would be violated. *"Here Congress has offered relatively mild encouragement to the States to enact higher minimum drinking ages than they would otherwise choose,"* id., just to show this Court recognizes the influence of federal funding on

state political processes.

43. Private funding to influence legislation has its judicially recognized effects on the political process too, and strikingly similar. It might be legally innocuous campaign contributions or legally sinister bribery. Contingent fee contracts for the procurement of public policy are void as against policy of law for the liklihood of improper influence, thus leading to inefficiency in public service and unnecessary expenditure of public funds. Tool Co. v. Norris, 2 Wall. 45; Crichfield v. Bermudez Paving Co., 174 Ill. 466, 481, 51 N.E. 552, 557. Slater's own citation, Pullman, Inc. v. Volpe, 337 F. Supp. 432 (¶30, above), dismissed a baseless lawsuit by a disappointed, would-be supplier of rail cars, showing how undiffuse the interests of tax recipients or would-be tax recipients can be. This is no coincidence; as one might gather from the annotations, the litigation over Chapter 53 has been largely brought by parties with their hands out. How, then, to resist politically the 80% share under 53 U.S.C. 5307(e)? See the closing paragraphs of Federalist 62 on wealth accumulated by intrepid political opportunism, and Federalist 73 and 79, that a power over a man's subsistence amounts to a power over his will.

44. Comparing state and federal financial power, thus their relative insulation from cost considerations, Helvering v. Davis, 301 U.S. 619, 644, said,

"... States and local governments are often lacking in the resources that are necessary to finance an adequate program of security for the aged.... Apart from the failure of resources, states and local governments are at times reluctant to increase so heavily the burden of taxation to be borne by their residents for fear of placing themselves in a position of economic disadvantage as compared with neighbors or competitors..."

45. While there is plenty pork barrelling on the state level, the taxpayers' interest is hardly so diffuse there as on the federal level, and that much more likely to object to excessive public investments. Too, statewide mobilizations are much easier than engaging a national

audience, especially when the issue is local to begin with. All the federal megabucks floating around, however, do just what South Dakota v. Dole countenanced, making political relief a practical impossibility. Thus, too, public transportation, as well as other local functions, dancing to the tune of the federal piper, the "local" decision-making being essentially a quest for the federal funds available. The concern for public utility, in particular improvment of public transportation, is about what one can discern from Slater's own pleadings, zilch. The gravy train does indeed take the main line while every other kind of train waits in the siding.

46. Rebuttal to the trial court's October 12, 2000 pronouncement about leaving the matter to elected officials illustrates two problems. First, Slater himself described a federal giveaway program to "local decision-making," with some lip service to compliance with federal law, the purpose of NEPA, however, informed decision-making, somehow falling through the cracks in this matter. (*"The purpose of NEPA is to ensure that federal agencies are fully aware of the impact of their decisions on the environment."* Oregon Environmental Council v. Kunzman, 817 F.2d 484, 492, among several dozen cases that could be cited on this point.) Wendt finds it quite enough to keep up with "local" transportation matters in the Chicago area. If he could easily give an hour's extemporaneous speech on those, what he knows about other "local" transportation matters he could write on the back of an envelope. Say, that he heard an official of the New York City system say that it had spent some $24 billion rebuilding itself and that he had no idea how much more would be required, 80% federally funded (49 U.S.C. 5307(e)), of course. Informed decision-making is the principal means by which representative government is held accountable. If informed decision-making is not an indispensable part of the political process, on the other hand, then maybe we can dispense with freedom of the press, Freedom of Information laws, and even open courts, at least those

with published opinions on novel questions.

47. Second, Wendt being registered to vote in only one location, only a miniscule portion of local decision-makers are accountable to him at the polls. Being liable for federal taxation to pay for "local decision-making" in a host of other places, however, in violation of Butler, he is subject to taxation without representation. Wendt is also precluded from suing on environmental grounds over matters not "local" to him. Lujan v. Defenders of Wildlfe, 504 U.S. 555, 572, n7. Not, of course, that "local decision-makers" Wendt cannot vote for or against are any less susceptible to federal "blandishments."

48. Thus federal funding of local transportation projects debases political accountability. First, it removes responsibility for costs from the "local" decision-making process, thus creating perverse "blandishments" to pad costs. Second, it makes federal taxpayers liable for costs imposed by "local" decision-makers, only a miniscule fraction of whom are accountable at the polls to any particular taxpayer.

D. Lower Court Rulings Void

49. The judicial process is defined as application of law to fact, District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 477. That simply has not happened in this case, on trial or review. These legal arguments were presented to the appellate court, except ¶¶81-84, and most to the trial court, coming back only as a straw man in the trial court, and not at all on appeal.

50. The denial of the Rule 60 motion said, 11a,13a:

"However, your record is complete. If you appeal all this, I am-- I am stating these things so that if the Court of Appeals chooses to reverse, they will also have as part of the record your recusal motion...."

"And there is simply not time to write down a reason for every decision that I have to make. That is particularly true in a case such as yours where you provide so many legal theories, as you did in this most recent motion and previously as well. So that is my decision."

"That is my- they are not going to be addressed in

writing. They are not going to be addressed one by one on the record. The case was terminated when it was- when I entered the order last fall. And I am not going to reconsider that.

"Am I right? I think I am right. Am I- do I know I am right? No, not at all."

"I could be wrong. And under our system, you know, that is what the Court of Appeals sits there to do, as far as I know."

51. The denial was affirmed on no stated reason except lack of desire for further briefing, with no finding of appropriate disposition, apparently but not expressly on the prohibition of attacking the underlying judgment in denial of a Rule 60(b) motion, under circumstances creating the appearance of a coerced court. 1a, 30a, 36a

52. Both courts furthermore ignored their duty to make any determination of such evasion as within judicial power, whether raised by the parties or not:

"... 'Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.' (U.S. cite) 'On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it.' (U.S. cite) The requirement that jurisdiction be established as a threshold matter 'springs from the nature and limits of the judicial power of the United States' and is 'inflexible and without exception.' (U.S. cite)" Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 94-95, leaving this Court in a poor position indeed to ignore Cohens v. Virginia, 6 Wheat. (19 U.S.) 264, 404,

"... It is most true that this Court will not take jurisdiction if it should not; but it is equally true, that it must take jurisdicion if it should... We have no more

right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution."

53. Wendt repeatedly attacked these rulings as void, as beyond the power of the court. On appeal he moved for a remand under Cir. Rule 50 for failure to give reasons, but was denied without reason given. His brief attacked the lower court proceedings as beyond judicial authority (essentially ¶¶54-72). Wendt's response to the motion for summary affirmance objected to the government's authorites as not ruling on void judgments. (24a). His petition for rehearing *en banc* (37a, 38a, 41aff.) again raised the question of a void ruling, this time adding the appearance of a coerced court. (37a).

54. The trial court arbitrarily, capriciously and obstinately labeled the matter a political question and maintained this position, without further justification, in the face of severe criticism based upon binding authority. It completely ignored U.S. v. Butler, 297 U.S. 1, 63-67, federal funding of local projects is unconstitutional, and Flast v. Cohen, 392 U.S. 83, 102-103, (re Butler's specific prohibition on federal spending for taxpayer standing). On the environmental issue it ignored Oregon Environmental Council v. Kunzman, 817 F.2d 484, 492, Baltimore Gas and Elec. Co. v. Natural Resources Defense Council, Inc., 462 U.S. 87, 97 (purpose of NEPA), Nucleus of Chicago Homeowners Ass'n v. Lynn, 524 F.2d 225, 229 (quality of urban life is justiciable), U.S. v. SCRAP, 412 U.S. 669, 687 (common injury is justiciable), and Florida Audobon Society v. Bentsen, 94 F.3d 658, 669 (DC Cir. en banc, 1996) (chain of causality). It also ignored numerous citations on judicial function and integrity, Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (if there is no right to sue, there are no rights that need to be respected), Marbury v. Madison, 1 Cranch. 137, 177, 178-179 (if the courts do not rule on constitutional questions, there is no constitution), Vasquez v. Hillery, 474 U.S. 254, 265-266 (*stare decisis* limits the "proclivities" of individual judges and bolsters the

integrity of the court), McCarthy v. Madigan, 503 U.S. 140, 146 (federal jurisdiction given must be exercised as much as that not given declined), and Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 101-102 (exercise of hypothetical jurisdiction is an ultra vires act). What is a jurisdictional dismissal, but hypothetical, which the court does not defend when attacked in open court as ultra vires and grounds for a lawsuit? (11a-12a)

55. In capriciously, arbitrarily, and obstinately labeling the matter a political question, the trial court practiced selective binding authority, purporting to issue rulings of law, particularly jurisdictional rulings, while ignoring binding authority.

56. Selective binding authority is no binding authority. If binding authority is the essence of judicial power, then a purported ruling based upon selective binding authority is a legislative act, not a judicial act, and beyond the power of the court. Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000), declared unconstitutional an 8th Circuit rule that unpublished opinions do not have precedential effect, that the rule purported to confer extra-judicial power upon the federal courts. In an elegant and authoritative, yet amazingly concise discussion, it outlines the history and significance of binding precedent in Anglo-American law. To the point here, its rationale also puts it beyond judicial power to ignore and nullify binding precedent.

57. Blackstone is quoted, at 901, that judges are sworn to determine law, not according to personal judgments, but according to known laws, not to pronounce new law, but to expound the old. Further, that if judges had the legislative power to depart from established legal principles, *"the subject would be in the hands of arbitrary judges, whose decisions would then be regulated only by their own opinions..."* Alexander Hamilton, Federalist 78, is quoted on 902, that *"[t]o avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their*

duty in every particular case that comes before them." The decision says in its own right, at 903, *"The duty of courts to follow their prior decisions was understood to derive from the nature of the judicial power itself and to separate it from a dangerous union with the legislative power."* Story's Commentaries is quoted at 904, *"... A more alarming doctrine could not be promulgated by any American court, than that it was at liberty to disregard all former rules and decisions, and to decide for itself, without reference to the settled course of antecedent principles. ...a departure ...would have been justly deemed an approach to tyranny and arbitrary power, to the exercise of mere discretion, and to the abandonment of all just checks upon judicial authority."* Not that the law is forever rigid, but departures from precedent require *"special justification,"* the decision holds at 905, with recent U.S. citations. Closing the general discussion, the decision concludes at 904, original emphasis:

"... At bottom, rules like our 28A(i) assert that courts have the following power: to choose for themselves, from among all the cases they decide, those that they will follow in the future, and those they need not. Indeed, some forms of the non-publication rule even forbid citation. Those courts are saying to the bar: 'We may have decided this question the opposite way yesterday, but this does not bind us today, and, what's more, you cannot even tell us what we did yesterday.' As we have tried to explain in this opinion, such a statement exceeds the judicial power, which is based on reason, not fiat.

58. Selective binding authority reduces the right to sue to a right to howl at the moon and all other rights to favors from the bench. It reduces the resolution of grievances to the selection of favorites. The right to sue is the right to protect all other rights:

"The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship." Chambers v.

Baltimore & Ohio, 207 U.S. 142, 148 (1907)

59. Although juries have an admitted, unreviewable power to nullify the law, U.S. v. Moylan, 417 F.2d 1002, 1006, at least one jury has been instructed that its exercise is a violation of a sworn duty, the instruction upheld on appeal, U.S. v. Krzyske, 836 F.2d 1013, 1021. Furthermore, *"...exercise of such power is in dereliction of the jury's sworn* duty." U.S. v. Funches, 135 F.3d 1405, 1408, original emphasis. If jury nullification can be seen as a back door, safety valve of sorts, Moylan, Gregg v. Furman, 428 U.S. 153, 199 n50, U.S. v. Datcher, 830 F. Supp. 411, no such view can be taken of judge nullification without undermining the essence of judicial power in the Anglo-American tradition. It is bad enough that trials should be a *"roll of the dice,"* U.S. v. Ruiz, 47 F.3d 452, 455 (1st Cir. 1995); U.S. v. Graves, 98 F. 3d 258, 260 (7th Cir. 1996), perhaps unavoidably due to the subjective nature of fact-finding, but we should really expect more of the more objective rule-determining process. If a constitutional issue gets lost in the rush, then the constitution is suspended, per Marbury.

60. Taking the jury acting as agents, not principals, Jerome Frank, Courts on Trial: Myth and Reality in American Justice, Chapter IX, "Defenses of the Jury System," pp129-130, calls jury nullification an unauthorized legislative act and a violation of sworn duty:

"The argument that juries make better rules than judges do has at least the virtue of honestly admitting the realities- of conceding that jurors often disregard what the trial judge tells the jurors about the (rules). But as a rational defense of the jury system, it is surely curious. It asserts that, desirably, each jury is a twelve-man ephemeral legislature, not elected by the voters, but empowered to destroy what the elected legislators have enacted or authorized. Each jury is thus a legislative assembly, legislating independently of all others. For even if the jury does no more than nullify a legal rule by refusing to apply it to a particular law-suit, yet it is legislating, since the power to destroy legal rules is

legislative power...,"
quite contrary to the idealized, even application of law described on the next page, or to legal rules so clear, according to Cardozo, they deprived the judge of discretion, Chapter IV, "Modern Legal Magic," p55-56.

61. Deprivation of the right to sue is a badge and incident of slavery; slaves had no right to sue. This practice was outlawed by the 13th Amendment and the Civil Rights Act of 1866. Jones v. Alfred H. Mayer Co., 392 U.S. 409, 441, 88 S.Ct. 2186, 20 LEd 2d 1189, construing §1 of the Civil Rights Act of 1866, held,

*"For this Court recognized long ago that, whatever else they may have encompassed, the badges and incidents of slavery- its 'burdens and disabilities'- included restraints upon 'those fundamental rights which are the essence of civil freedom, namely, the same right * * * to inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens." Civil Rights Cases, 109 U.S. 3, 22*

(note) *"... we note that the entire Court agreed upon at least one proposition: The Thirteenth Amendment authorizes Congress not only to outlaw all forms of slavery and involuntary servitude but also to eradicate the last vestiges and incidents of a society half slave and half free, by securing to all citizens of every race and color, 'the same right to make and enforce contracts, to sue, be parties, give evidence, and to inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens." Civil Rights Cases, 109 U.S. 3, 22*

62. The right to sue was thought a privelege and immunity of the United States. Slaughterhouse Cases, 83 U.S. (16 Wall) 36 (1873), dissents, 96, 117.

63. The issue is important because the judicial process is important. At least it was considered so in the early days of the country. In 1827 John Marshall said,

"Advert, Sir, to the duties of a Judge. He has to pass betwen the Government and the man whom that Government is prosecuting: between the most powerful individual in the community, and the poorest and most

unpopular. It is of the last importance, that in the exercise of these duties, he should observe the utmost fairness. Need I press the necessity of this? Does not every man feel that his own personal security and the security of his property depend on that fairness? The Judicial Department comes home in its effects to every man's fireside: it passes on his property, his reputation, his life, his all. Is it not, to the last degree important, that he should be rendered perfectly and completely independent, with nothing to influence or control him but God and his conscience?... I have always thought, from my earliest youth till now, that the greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent Judiciary." Evans v. Gore, 253 U.S. 245, 250-251

64. Joseph Story, Commentaries on the Constitution of the United States, Chapter XXXVIII, §818, said,

"... Where there is no judicial department to interpret, pronounce, and execute the law, to decide controversies, and to enforce rights, the government must either perish by its own imbecility, or the other departments of government must usurp powers, for the purpose of commanding obedience, to the destruction of liberty. The will of those, who govern, will, under such circumstances, become absolute and despotic; and it is wholly immaterial, whether power is vested in a single tyrant, or in an assembly of tyrants... And it is no less true, that personal security and private property rest entirely upon the wisdom, the stability, and the integrity of the courts of justice. If that government can be truly said to be despotic and intolerable, in which the law is vague and uncertain, it cannot but be rendered still oppressive and more mischievous, when the actual administration of justice is dependent upon caprice, or favour, upon the will of rulers, or the influence of popularity. When power becomes right, it is of little consequence, whether decisions rest upon corruption, or weakness, upon the accidents of chance, or upon deliberate wrong. In every well organized government,

therefore, with reference to the security of both public rights and private rights, it is indispensable, that there should be a judicial department to ascertain, and decide rights, to punish crimes, to administer justice, and to protect the innocent from injury and usurpation."

65. Tocqueville wrote in Democracy in America,

"The peace, prosperity, and the very existence of the Union rest continually in the hands of these seven federal judges. Without them the Constitution would be a dead letter... Their power is immense, but it is power springing from opinion. They are all-powerful so long as the people consent to obey the law; they can do nothing when they scorn it...

"But if ever the Supreme Court came to be composed of rash or corrupt men, the confederation would be threatened by anarchy or civil war."

66. As late as 1960 Charles Black could write,

"But a case can be made for believing that the prime and most necessary function of the Court has been that of VALIDATION, not that of invalidation. What a government of limited powers needs, at the beginning and forever, is some means of satisfying the people that it has taken all steps humanly possible to stay within its powers. That is the condition of its legitimacy, and its legitimacy, in the long run, is the condition of its life. And the Court, through its history, has acted as the legitimator of the government. In a very real sense, the Government of the United States is based on the opinions of the Supreme Court." The People and the Court, p52 (as reissued 1968) (original emphasis)

67. In construing Circuit Rule 50, requiring trial courts to give reasons, the 7th Circuit has held it

"... serves three important functions: 'to create the mental discipline that an obligation to state reasons produces, to assure the parties that the court has considered the important arguments, and to enable a reviewing court to know the reasons for the judgment.'" (cite) Sims v. Lucas, 9 F.3d 1293, 1294.

68. The real reasons for courts to give reasons,

however, are those of *stare decisis,* the ancient doctrine of binding authority, in part the integrity of the court:

"Today's decision is supported, though not compelled, by the important doctrine of stare decisis, the means by which we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion. That doctrine permits society to presume that bedrock principles are founded in law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact..." Vasquez v. Hillery, 474 U.S. 254, 265-266

69. Charles Rembar wrote in The Law of the Land: The Evolution of Our Legal System, 1980, p53,

"Stare decisis is an anticorruption device. If courts are not bound by external rules, if they are not called upon to explain their decisions in terms of precedent, corruption is made easier. 'What is right' in a particular case too readily becomes what is right for the particular judge or his friends. There should be a single set of laws for rich and poor alike; that much is easy. There should also be one set of laws for those who helped the judge get on the bench and those who opposed, for those who have good stock-market information to give the judge and those who don't, for the organized group and the unattached private citizen. Stare decisis does not insure this. But it makes it complicated and awkward for the judge to be dishonest. His decision must appear consistent with what has been done in the past, and more than an appearance of consistency is necessary to avoid reversal on appeal. A system in which he was bound only to achieve a 'just result' would be a breeze for the crooked judge. There are considerations, he would tell you, that are not immediately apparent; one must not be too technical."

70. As far back as Blackstone's Commentaries, *stare decisis* limited the "proclivities" of courts:

"...For it is an established rule to abide by former precedents, where the same points come again in litiga-

tion; as well to keep the scale of justice even and steady, and not liable to waver with every new judge's opinion; as also because the law in that case being solemnly declared and determined, what before was uncertain, and perhaps indifferent, is now become a permanent rule, which is not in the breast of any subsequent judge to alter or vary from, according to his private sentiments: he being sworn to determine, not according to his private judgment, but according to the known laws and customs of the land; not delegated to pronounce a new law, but to maintain and expound the old one..." Vol. I, p69

71. Selective binding authority reduces the law to a favor granted or withheld by judges, as an alderman would a zoning variance, and reduces the judical process to a seance with black-robed oracles. In short, it nullifies the law. It makes the law unavailable, or available only by favor of the judges, if that is still law. It confers on judges the very discretion that *stare decisis* limits. What does it take to invoke the law, anyway? Does one have to be an old law school buddy, perhaps? An old political crony? A big corporation? An influence peddler?

72. The historic parallels are a bit too close for comfort when the government accuses Wendt of "contravening the law" for arguing an administrative regulation incompatible with NEPA and the court simply ignores his constitutional and statutory arguments both. Paul Craig Roberts and Lawrence M. Stratton, The Tyranny of Good Intentions: How Prosecutors and Bureaucrats are Trampling the Constitution in the Name of Justice, xi, quote a collection of Nazi documents, *"German law reflected the tradition of a strong state as the embodiment of the community by which individuals would be granted such rights as were considered compatible with its interests."* Concluding a chapter on the abdication of legislative authority to unelected bureaucrats, they give the Nazi Enabling Act credit for more candor, at least, than current American practice:

"In addition to the procedure for the passage of legislation outlined in the Constitution, the Reich

Cabinet is also authorized to enact Laws... The national laws enacted by the Reich Cabinet may deviate from the Constitution... The national laws enacted by the Reich Cabinet shall be prepared by the Chancellor and published in the official gazette. They come into effect, unless otherwise specified, upon the day following their publication." pp171-172

E. Day In Court In Need of Definition

73. It was a national scandal in the mid-1990's when a fundamentalist declared that God does not hear the prayer of a Jew. When will the federal courts hear the "prayer" of a pro se litigant, one with novel challenges to established practices?

74. Not only does stare decisis limit the discretion of the courts, above, ¶¶49-72, but also the requirements of constitutional adjudication, Lake County v. Rollins, 130 U.S. 662, 673 (40a), and the requirements of due process. That is, at least in theory, if not in Wendt's experience, in which courts exercise the discretion to turn the law into a collection of excuses. Wendt has yet to see his side of a case fairly represented in a court decision; so far it has always been reduced to a straw man, easily knocked down, never getting more than fifteen minutes in court.

75. It takes a "day in court" to establish due process and suitably limit judicial discretion, not fifteen minutes. If "day in court" is yet undefined by this Court, two appellate courts offer this formulation, requiring questions be addressed and laws applied. Bartlett v. Bowen, 816 F.2d 695, 706-707, (D.C. Cir. 1987) succinctly described the judiciary's role under the separation of powers doctrine, coming close to defining "day in court":

"Since Marbury v. Madison, 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803), the Supreme Court has interpreted the Constitution to give to the judiciary an important role in the structure of the government. First, federal courts fulfill their role ONLY by adjudicating cases or controversies before them. Second, when faced with a proper case or controversy, courts, both state and federal, ***must***

apply all applicable laws in rendering their decisions. *Third, courts have a duty to uphold the Constitution. Fourth, a law contrary to the Constitution may not be enforced. Last, a final judgment by a court is binding and must be enforced...."* (Caps emphasis original, bold added) Painter v. Shalala, 97F.3d 1351, 1359 (10th Cir. 1996)

76. The footnote to the second point on applying law cited Marbury and Testa v. Katt, 330 U.S. 386, which held at 394 that a state could not deny enforcement of claims growing out of a valid federal law. This point direly needs further reinforcement by this Court.

77. In that same general vein, Billington v. Underwood, 613 F.2d 91, 95 likewise summarized Supreme Court holdings on a due process requirement,

"...The very notion of a hearing, however informal, connotes that the decision maker will listen to the arguments of both sides before basing a decision on the evidence and legal rules adduced at the hearing...," thus raising the question: How is anyone to know if the decision-maker has listened to both sides of the case, especially if one side of the case is reduced to a straw man or just not mentioned at all?

78. *"... The touchstone of due process is protection of the individual against arbitrary action of government. (U.S. citation)"* Wolf v. McDonnell, 418 U.S. 539, 558. Thus arbitrary or capricious action opens even a state proceeding to federal court interference:

"... The action of the court followed a fair hearing, and there is no pretense that the challenged views were adopted in order to evade a constitutional issue. We cannot interfere, unless the judgment amounts to a mere arbitrary or capricious exercise of power, or is in clear conflict with those fundamental 'principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights.' (U.S. citations)" American Ry. Express Co. v. Commonwealth of Kentucky, 273 U.S. 269, 273

79. It is not a judicial determination without the opportunity to be heard, but usurpation and oppression:

"It is a rule as old as the law that no one shall be personally bound until he has had his day in court, by which is meant until he has been duly cited to appear and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination. It is judicial usurpation and oppression, and can never be upheld where justice is justly administered." Galpin v. Page, 18 Wall. (U.S.) 350, 368-369, 21 L.Ed. 959

80. The whole point of a court system is to resolve disputes and minimize the peril of unresolved disputes. How then are disputes resolved by edicts from Mt. Olympus, with no regard to the actual grievances, if one side is simply stonewalled, as Wendt has been, time and time again? Hitler, Mao, Castro and Khomeini all rode to power on very legitimate but unresolved grievances.

F. Federal Rules of Civil Procedure 60, 77(d)

81. The Rule 60 motion attacked the judgment as void for lack of due process and clerical error. Its docket sheet entry, appended to the motion, plainly read "NO NOTICE." Notice is, of course, a fundamental requirement of due process; judgments are unquestionably void under FRCP 60(b)(4) if personal jurisdiction was not acquired by proper notice. Recreational Properties v. Southwest Mortg. Service, 804 F.2d 311, 314 (5thCir.1996). Furthermore, the burden to notify is entirely on the party required to make it; the party entitled to notice is not required to even furnish postage due. Id. FRCP 77(d) requires the clerk to mail notice of the entry of judgment, although the rule states lack of notice does not affect the time to appeal, except as provided under FRAP 4(a)(6). The scheme of FRAP 4(a)(6) and FRCP 77(d) requiring written notice, if served by the other side rather than the clerk, however, supposedly *"confers certitude without leaving a victorious litigant at the mercy of a slipshod clerk,"* Bass v. U.S. Dep't of Agriculture, 211 F.3d 959, 963. In this case, however, Wendt has yet to receive written notice of either the October 12, 2000 or the May 3, 2001 judgments, from the clerk or the other side. Under

FRCP 77(d) as written, but nevertheless affecting the time to appeal, the clerk could serve, even at this late date, the required notice of judgment, and give Wendt seven days to file under FRAP 4(a)(6) for another fourteen days to file a notice of appeal. Thus, contrary to Bass, the process is at the mercy of a slipshod clerk. Thus, also, the judgment is void for lack of notice as the Rule 60 motion contended. Thus, too, the notice of appeal is timely as regards the underlying judgment. This is a jurisdictional question which may be brought up at any time, which the Court must consider even on its own motion. The portion of FRCP 77(d) holding lack of notice does not affect time to appeal denies due process.

82. Mineta moved for summary affirmance (18a) on grounds the underlying judgment cannot be attacked on appeal from denial of a Rule 60 motion. Wendt objected in part that his authorities did not deal with a void judgment. (24a). The court affirmed in a cryptic order with no specific jurisdictional statement (1a).

83. The purpose of FRCP 60, that judgments reflect the true merits of the case. Serio v. Badger Mutual Insurance Company, 266 F.2d 418, 421 (5th Cir. 1959), is utterly defeated in this case. The purpose of the prohibition, finality of litigation, Browder v. Director, Department of Corrections of Illinois, 434 U.S. 257, 264, yields to correction of void judgments, U.S. v. Boch Oldsmobile, Inc., 909 F.2d 657, 661 (1st Cir. 1990). If denials of Rule 60 motions are generally reviewed for abuse of discretion, the trial court has no discretion in reviewing void judgments, a legal question; a judgment is either a legal nullity or not, and reviewed *de novo,* Burke v. Smith, 252 F.3d 1260, 1263, 1267 (11th Cir. 2001). (But see Blaney v. West, 209 F.3d 1027, 1031 (7th Cir. 2000), void judgments reviewed for abuse of discretion.) In Wages v. I.R.S., 915 F.2d 1230, 1234 (9th Cir. 1990), the court reviewed the underlying judgment questioned as void under Rule 60.

84. About a decade ago the public was shocked when a notice of appeal was filed a day late in a capital case and post-conviction arguments were not reviewed.

A little noted point tempers this perception, however, in that a procedural default is not a bar if it would result in a fundamental miscarriage of justice. Coleman v. Thompson, 895 F.2d 139, 144 (4th Cir. 1990), affirmed in principle, 501 U.S. 722, 757. In this matter the undisputed law and facts are entirely on Wendt's side; thus a highly technical "procedural default," at most, has indeed resulted in a miscarrage of justice.

G. Quality of Urban Life Justiciable Question

85. Even the trial court admits, however inadvertantly, that Wendt particularized his injury, *"...If Wendt is right, every citizen in the greater Chicago area suffers the same injury...."* (5a) Thus Wendt has established a geographical nexus; he is not complaining about a dam on the other side of the country or wildlife conditions in some foreign country, per Defenders, 504 U.S. at 572, n7. As shown above, the funds in question are spent by local authorities for local projects, even if these "localities" might have populations of several million.

86. How can anyone complain about the general quality of urban life, specifically, the impacts of different transportation technologies, without addressing conditions commonly affecting thousands or millions of people? The quality of urban life, nevertheless, is justiciable. Nucleus of Chicago Homeowners Ass'n v. Lynn, 524 F.2d 225, 229 (7th Cir. 1973).

87. Sierra Club v. USDOT, 962 F. Supp. 1037, 1041-1042 (N.D.Ill. 1997), rejected a challenge to standing on grounds plaintiffs' enjoyment of the countryside could be affected by a toll road. Even in the government's jaundiced accounts, it should be obvious city dweller Wendt's enjoyment of the city is affected by transit technology. Why isn't sauce for countryside highways sauce for outdated city transit systems being mindlessly replaced in kind? Does everything have to alleged, argued and proven in the initial complaint, anyway?

H. Constitutional Duty for Informed Decision Making

88. If indeed the people are the principal and the government the agent, per Federalist 78, then informed

decision-making is a constitutional obligation of the government to the people, ¶46, above (per NEPA). Agents have always had the duties to keep records and otherwise keep the principal informed. This obligation deriving from the fundamental nature of government, not legislative grace, it is not properly subject to burdensome, arcane, highly technical standing requirements. Just as the burden of proving notification is on those making it, above, ¶81, the burden of proving this other notification belongs on those with the duty to make it.

I. Access to Court Infringed by Unconstitutional Laws

89. Wassall v. DeCaro, 91 F.3d 443, 446-447 (3rd Cir. 1996), viewed relitigation cases with a jaundiced eye, *"the policy of avoiding 'litigation concerning litigation' is aimed at preserving resources and allowing access to the courts by other litigants..."* If relitigation curbs access to the courts, how about the workload from unconstitutional laws? In this case the trial court said in so many words it did not have the time, and the appellate court obviously did not take the time for proper review.

90. Charles Black, The People and the Court, 1960 (as reissued 1968) p76, wrote that without a Hamiltonian view of the necessary and proper clause, the T.V.A., the F.B.I., the Federal Reserve System, the Interstate Commerce Commission, federal control of marijuana, and investigations by committees of Congress would be out of the question. On the contrary, he nevertheless wrote, p52, that curbing unconstitutional statutes was the key to governmental legitimacy, p52 (¶66, above). Otherwise, he says, pp42-43, dangerous disaffection could result.

91. If Wendt is not too overly Jeffersonian to see investigative powers as necessary and proper, he is quite Jeffersonian enough to see Black's other indispensables as dispensable. For present purposess, suffice to say,

1) "federal control of marijuana" and other drugs places a very heavy burden on the federal courts, and

2) If the prohibition amendment were necessary to ban alcohol, so is another to prohibit other drugs.

92. Federalist 62 offers grounds to declare

impossibly complicated laws unconstitutional:

"The internal effects of a mutable policy are still more calamitous. It poisons the blessings of liberty itself. It will be of little avail to the people that the laws are made by men of their own choice if the laws be so voluminous they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today, can guess what it will be tomorrow..."

93. U.S. v. Cheek, 498 U.S. 192, 199-200, recognized the Internal Revenue Code as one example. The IRC, of course, is the one most embroiled in daily life and likely the one that generates the most litigation.

94. Chief Judge Boyce F. Martin, Jr., U.S.C.A., 6th Cir., In Defense of Unpublished Opinions, 60 Ohio State Law Journal 177, 181 (1999), attributes the spiraling workload of federal courts in part to statutes, as unpublished opinions themselves become an institution.

95. Most scholarly opinion, however, is sharply critical of unpublished opinions. Charles E. Carpenter, Jr., The No-Citation Rule for Unpublished Opinions: Do the Ends of Expediency for Overloaded Appellate Courts Justify the Means of Secrecy?, South Carolina Law Review, 50:234 (1998), is a compendium of scholarly opinion on them. Acknowledging the "volume crisis," the first paragraph lists a dozen concerns raised by unpublished opinions and no-citation rules. Especially pertinent are, *"...(2) judicial precedent as a foundation of the common law, (3) quality of analysis in deciding cases, (and) (9) the right to petition the judicial branch for redress of grievances..."* N35 quotes a dissent to Wilson v. Layne, 141 F.3d 111, 124n6, in revealing part, *"... However, it is well known that judges may put considerably less effort into opinions they do not intend to publish. Because these opinions will not be binding precedent in any court, a judge may be less careful about his legal analysis, especially when dealing with a novel question of law...."* A novel question of law? In an unpublished

opinion? Carpenter concludes, *"Lawyers... do not want to travel on a voyage over the deep like ancient fisherman who may die an unknown death or return with a catch of good fortune, never knowing why, and only able to curse or give thankful praise to the all powerful but unrevealing gods."* Neither does non-lawyer Wendt.

96. "Justice in the Dark," Forbes, October 28, 2000, p72, is well summarized in its pull quote, *"When judges issue an unpublished opinion, they are free to ignore the law and indulge their whims instead."* It dwells considerably more on the larger impacts of unpublished opinions than the scholarly articles, and is hardly so deferential to judges. What Wendt has gotten so far from the vaunted federal courts could just as easily come from ward heelers fluent in legalese. In any other profession this would be malpractice, even legal malpractice:

"...The courts agree that 'legal malpractice' encompasses liability for negligence. The wrong is sometimes alternatively stated in terms of an implied contract to exercise ordinary skill and knowledge, and corresponds to the standard of care used to evaluate competence. Thus, the attorney's liability is comparable to that of other professionals." Mallen and Levit, Legal Malpractice, Second Edition, p3 (The proper scienter, however, would be that of United States v. Ramsey, 785 F.2d 184, 188-191, 7th Cir., the "ostrich instruction" case.)

97. The right to sue is the right to protect all other rights. Chambers, ¶58. In Wendt's case it has been and probably will continue to be infringed by judicial caseloads swollen by litigation under unconstitutional laws. At least his case ought to be given priority over them.

J. Appearance of a Coerced Court

98. With nothing on the table from the motion for summary affirmance (18a), Wendt had to wonder what is under it. (30a). If the United States government would slam the courthouse door with such ill-begotten, mendacious technical sophistry, then how low would it stoop? Former Chief Federal District Judge Charles Wyzanski wrote in Lord v. Kelley, 240 F. Supp, 167, 169:

"More than once the judges of a court have been reminded that they personally are taxpayers... And a judge who knows the score is aware that every time his decisions offend the Internal Revenue Service he is inviting a close inspection of his own returns..."

99. More explicit is State Bar of Nevada v. Claiborne, 104 Nev. 115, 756 P.2d 464 (1988), almost 90 pages of opinion and exhibits on the sandbagging by federal agents of impeached Federal District Judge Harry Claiborne. The concurring opinion concludes at 551,

"... One of the greatest bulwarks for freedom in this country is our independent, life-tenured federal judiciary. It is vitally important, therefore, for the notion never to gain credence that a United States District Judge can be easily targeted, discredited, and destroyed. Whenever such an effort to discredit and destroy a federal judge is undertaken, I think it is essential that any suspect facts ... shall be made known..."

100. Expanding at length upon *de novo* review and its purposes, Salve Regina College v. Russell, 499 U.S. 225, 231-233 (1991), set forth the proper functions of an appellate court, concluding, *"Independent review, however, does not admit of unreflective reliance on a lower court's inarticulable intuitions...."* What can the 7th Circuit show for itself here? Unreflective reliance on the government's inarticulable intuitions? Confidence in the courts is necessary, Valley Forge Christian College v. Americans United, 454 U.S. 464, 474-475 (5a). The federal judiciary would be in deep trouble indeed if Wendt's impressions became widespread, a damage very, very difficult to repair, at least when it is a bit too late. Just ask Enron, Arthur Andersen, or the Boston Archdiocese. Is the federal judiciary an unsinkable Titanic? More to the point, does it think it is? If justice must have the appearance of justice, Marshall v. Jerrico, Inc., 446 U.S. 238, 243, this Court has no choice but to make correction.

K. Disqualification of Judges; Reopening of Previous Case; Mandatory Certiorari

101. Wendt objected to the participation of 7th Cir-

cuit judges stemming from ultra vires conduct in his previous case, Wendt v. Univ. of Ill., et. al., No. 99-3409, a matter still unaddressed. If courts have no discretion in the event of a void decision, Burke, ¶83, how can there be any discretion to leave the question of a void decision unanswered? Such conduct changes the role of judge to one of potential adversary and defendant. Thus there should be a rule disqualifying judges who simply do not respond to questions of ultra vires conduct. Why shouldn't judges explain the authority and validity of their conduct when the question arises? Why shouldn't it be second nature for judges who realize their most important function is to keep governmental functions within constitutional limits, their own included? And incur some consequence when they do not, if only for the protection of the judicial process, if only for finality in litigation, if only to avoid a sccandal of unfinished business equivalent to that of the Georgia crematorium? Thus, also, certiorari is mandatory in this matter, Rule 10 of this Court to the contrary.

102. Thus also the members of this Court are at least technically disqualified for their failure to deal with a question of ultra vires conduct in that previous case in this Court, No. 00-325. For the same reason that case should be reopened, adding American Ry. Express Co. v. Commonwealth of Kentucky, 273 U.S. 269, 273, ¶78, above, to the discussion of "Rooker Feldman doctrine" as an hypothetical jurisdictional bar

CONCLUSION

Wherefore action by this Court is necessary. The facts and law presented above support summary judgment, that the program under Title 49, United States Code, Chapter 53, is unconstitutional. In the alternative, at least, the case should be remanded for consideration of environmental issues.

William F. Wendt, Jr.
1651 Hubbard
Chicago, Illinois 60622
(312)421-4862 (landlord)

APPENDIX

TABLE OF CONTENTS

Federal Appellate Court Order, November 20, 2001	1a
Federal Trial Court Order, September 14, 2001	2a
Federal Trial Court Order, October 12, 2001	7a
Federal Trial Court Order, May 3, 2002	10a
Federal Appellate Court Order, Rehearing, January 28, 2002	15a
Constitutional Provisions and Statutes	16a
Motion for Summary Affirmance, November 2001	18a
Response to Motion for Summary Affirmance, November 2001	23a
Petition for Rehearing En Banc (Motion for Reconsideration) January 2002	33a

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UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Submitted November 16, 2001
Decided November 20, 2001

Before

Hon. RICHARD A. POSNER, Circuit Judge
Hon. ILANA DIAMOND ROVNER, Circuit Judge
Hon. ANN CLAIRE WILLIAMS, Circuit Judge

WILLIAM F. WENDT, JR., Plaintiff-Appellant,	] Appeal from the United States District Court for the Northern District of Illinois, Eastern Div'n.
No. 01-2709 v.	]
RODNEY SLATER, Secretary of the United States Department of Transportation, Defendant-Appellee.	] No. 00 C 577]]Wayne R. Andersen, Judge

The appellee has filed a motion for summary affirmance. This court has carefully reviewed the final order of the district court, the record on appeal, the appellee's motion, and the appellant's response to the motion. Based on this review, the court has determined that any issues which could be raised are insubstantial and that further briefing would not be helpful to the court's consideration of the issues. *See Taylor v. City of New Albany,* 979 F.2d 87 (7th Cir. 1992); *Mather v. Village of Mundelein,* 869 F.2d 356, 357 (7th Cir. 1989) (per curiam) (court can decide case on motions papers and record where briefing would be a waste of time and no member of the panel desires briefing or argument).

Accordingly, **IT IS ORDERED** that the motion for summary affirmance is **GRANTED,** and the judgment of the district court is summarily **AFFIRMED.**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DISTRICT

WILLIAM F. WENDT, JR.	]	
Plaintiff,	]	
v.	]	**No. 00 C 577**
	]	
RODNEY SLATER. Secretary,	]	**Honorable**
	]	**Wayne R.**
United States Department	]	**Andersen**
of Transportation, Defendant.	]	

MEMORANDUM, OPINION AND ORDER

Pro se plaintiff, William Wendt, ("Wendt") has sued Rodney Slater, Secretary of the United States Department of Transportation, ("the Secretary") complaining that federal funding of local transit systems in Chicago is unconstitutional and requesting that the court halt funding of these systems, or, in the alternative, mandate an Environmental Impact Statement for these projects. Wendt also requests that we order the Secretary to evaluate alternative methods of transportation. The Secretary has moved to dismiss this complaint under Fed. R. of Civ. P. 12(b)(1) and 12(b)(6). He argues that Wendt has not demonstrated that he has standing to sue and has not stated a claim upon which relief can be granted. For the reasons stated below, we grant the Secretary's motion to dismiss on both grounds.

BACKGROUND

Wendt's complaint focuses on his belief that the mass transit system in Chicago is inadequate. The complaint enumerates a number of perceived deficiencies in the system as it currently exists and outlines alternatives that Wendt describes as preferable. Specifically, he claims that the federal funding of a wide variety of transportation projects is both unconstitutional and illegal under several federal statutes. He asks the court to declare that federal expenditures for rehabilitating the system require an Environmental Impact Statement ("EIS"). In addition, he asks the court to issue a writ of mandamus requiring the Secretary to

consider alternative modes of public transportation to those that exist now.

Federal law authorizes the Secretary of Transportation to make grants and loans to assist localities in financing their transportation projects. 49 U.S.C. §5301. The Federal Transit Administration ("FTA") administers this program. In the Chicago area, FTA provides funding to the Regional Transportation Authority which oversees the budgets of the CTA, METRA and PACE. Under the FTA program, prospective recipients submit applications for funding. The Secretary must ensure that each funded project complies with applicable federal statutes and regulations, including the National Environmental Protection Act ("NEPA"). Regulations exist which specifically set forth procedures for federal agencies to use to determine whether, when, and how to prepare an EIS. See 40 C.F.R. §1500-1517. The FTA also has implemented regulations concerning the applicability of environmental impact statements to transportation projects.

Wendt's complaint does not identify specific decisions of the Secretary which have violated this regulatory scheme. Instead, he lists various problems and deficiencies that currently exist within the transit system and proposes solutions which he deems far preferable to those that already have been proposed or made.

DISCUSSION

A motion to dismiss a complaint does not test whether the plaintiff will prevail on the merits, but instead whether the plaintiff has properly stated a claim. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). In deciding the motion to dismiss, the court must assume all facts alleged in the complaint to be true, construe the allegations liberally and view the allegations in the light most favorable to the plaintiff. Wilson v. Formigoni, 42 F.3d 1060, 1062 (7th Cir. 1994). Dismissal is properly granted if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Cushing v. City of Chicago, 3 F.3d 1156, 1159 (7th cir. 1993).

It is well settled that the allegations of a pro se complaint, however inartfully pleaded, are held to less

stringent standards than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). "Such a complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Hughes v. Rowe, 449 U.S. 5, 10 (1980).

The Secretary's first argument in favor of dismissal is that the court has no subject matter jurisdiction over this matter because Wendt does not have standing to bring this suit. Clearly, there are constitutional limitations on the court's jurisdiction. To be heard, a plaintiff must have standing and be "entitled to have the court decide the merits of the dispute or of particular issues." Warth v. Seldin, 422 U.S. 490, 498 (1975). In Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992), the Supreme Court set forth several principles governing the issue of standing. Plaintiff must first show that he has suffered an injury in fact, that is an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural and hypothetical. Second, plaintiff must show a causal connection between the injury and the conduct complained of, that is, the injury must be fairly traceable to the challenged action of the defendant, and not the result of an independent action of some third party not before the court. Third, plaintiff must show that it is likely, as opposed to merely speculative, that a favorable decision can redress the injury.

Wendt bears the burden of establishing that he has met these standards. Id. at 561. Further, when standing is challenged as a factual matter (as it is here), Wendt must support the allegations of standing with "competent proof." McMutt v. General Motors Acceptance Corp., 298 U.S. 178, 189 (1936). "Competent proof" requires that a plaintiff demonstrate by a preponderance of the evidence, or proof to a reasonable probability, that standing exists. NLFC Inc. v. Devcom Mid-America, Inc., 45 F.3d 231, 237, (7th Cir.), cert. denied, 515 U.S. 1104 (1995).

We agree with the Secretary that Wendt has failed to establish an injury in fact. Wendt must show that the injury alleged must affect him in a personal and individual way. Id. at fn. 1. Standing does not exist for

plaintiffs to address issues which amount to "generalized grievances, pervasively shared and most appropriately addressed in the representative branches." Valley Forge Christian College v. Americans United, 454 U.S. 464, 474-475 (1982). When a dispute involves only a generally available grievance about government involving harm to the plaintiff and every citizen's interest in the proper application of the Constitution, standing does not exist. Marozan v. United States, 90 F.3d 1264, 1286 (7th Cir. 1996, cert. denied, 520 U.S, 1109 (1997). If courts did not impose this limitation, we would be called upon "to decide abstract questions of wide public significance even though other governmental institutions may be more competent to address the questions..." Warth v. Seldin, 422 U.S. 490, 500 (1975).

The complaint before us clearly alleges the type of generalized grievance we cannot address. In fact, the only injury Wendt describes in his complaint that he experiences unspecified environmental injuries which are caused by the current system of public transportation which would be alleviated by alternative methods of transportation. If Wendt is right, every citizen in the greater Chicago area suffers the same injury. This is not the 'particularized injury' that Wendt must show to establish standing to sue. See Lujan, 504 U.S. at 560.

Even if Wendt could surmount this hurdle, however, we also do not see a causal connection between the complained of injury and the challenged conduct. Sanner v. Board of Trade, 62 F.3d 918, 923 (7th Cir. 1995). As the Secretary points out, Wendt complains that RTA, CTA, and METRA have used federal funds for the rehabilitation of Chicago's transit system in a manner contrary to methods that Wendt prefers, but he fails to specify how the Secretary of Transportation's actions have injured him in the way he describes. He does not tell us which specific project or action taken in connection with what specific project allegedly caused the injury. Indeed, the environmental injury about which he complains may well have been the result of the action taken by others rather than directly caused by the Secretary.

Wendt argues unpersuasively that his standing as taxpayer confers standing to challenge the expenditure of federal funds for transportation. He is wrong. As the Secretary demonstrated, taxpayers may challenge the constitutionality of federal spending only in limited circumstances. Among other requirements, Wendt's complaint must challenge the exercise of Congress' authority to tax and spend as provided in Article I, Section 8 of the Constitution. Flast v. Cohen, 392 U.S. 83, 102 (1968). Further, he must show that the challenged enactment exceeds the scope of the power conferred by the Constitution to the Congress in Article I, Section 8, Id. Wendt has not done so. In fact, we cannot discern from his complaint specifically what enactment he challenges, let alone which constitutional provision prohibits it.

Even if Wendt could establish standing, his complaint would still fail to state a cause of action under the NEPA. The NEPA does not establish a private right of action for alleged violations of its provisions. Lujan v. National Wildlife Federation, 497 U.S. 871, 882 (1990). Therefore, Wendt must proceed under the Administrative Proceedure Act to seek a remedy for any alleged violation of the NEPA. This requires a final agency action. 5 U.S.C. § 704. Wendt has not identified any such an action. Instead he challenges the implementation of the entire mass transit program in Chicago. Such a generic indictment of the transit system does not state a cause of action. Id. at 890.

CONCLUSION

For all of the foregoing reasons, we grant the Secretary's motion to dismiss the complaint and terminate the case.

It is so ordered.

s/Wayne R. Andersen
Dated: September 14, 2000 United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DISTRICT

WILLIAM F. WENDT, JR. Plaintiff,	]	
	]	No. 00 C 577
vs.	]	
	]	Chicago, Illinois
RODNEY SLATER. Secretary,	]	October, 12, 2000
United States Department of	]	9:00 o'clock a.m.
Transportation, Defendant.	]	

TRANSCRIPT OF PROCEEDINGS - RULING
BEFORE THE HONORABLE WAYNE R. ANDERSEN

APPEARANCES:

For the Plaintiff: Mr. WILLIAM F. WENDT, JR.,
pro se
1651 Hubbard
Chicago, Illinois 60622

For the Defendant: UNITED STATES ATTORNEY'S OFFICE
219 South Dearborn
Suite 500
Chicago, Illinois 60604
BY: MR. SAMUEL D. BROOKS

Court Reporter: ROSEMARY SCARPELLI
219 South Dearborn Street
Room 1412
Chicago, Illinois 60604
(312) 435-5815

THE CLERK: Case 0 C 577, Wendt versus Slater
THE COURT: Twice in two weeks.

Mr. Wendt, I believe that a number of the ideas that you have have substantial merit, but I think a lot of them should be addressed in a legislative policy-making fashion and are not subject to proper redress in court.

With respect to your motion that I recuse myself because of the fact that you are involved in litigation with a firm -- the successor to a firm that I used to be a

partner in 16 years ago, I am going to deny the motion. I don't know the lawyers that you said were involved and I don't think there is any connection at all between this lawsuit and their representation of the University of Illinois in that lawsuit. So you can appeal that if you think I am wrong, but I just don't think there is any connection whatsoever.

Secondly, I am not willing to alter or amend the judgment. As I said before and I say now, I think primarily what you seek is better government, which is a -- well, you know, that is a worthy objective. Frankly, I have expended a large part of my life attempting to do that, with some success and some failure by my standards. But under those circumstances I am not willing to amend the judgment that I entered. If you think I am wromg, you can appeal it on either one of these matters.

But I promise you I read everything you have submitted, was impressed by some of the substance of what you had to say on the transportation issues, for example, but I don't think it is appropriate for a court to step in and start ordering the policy makers who have been given the authority to implement policy how to do these things. So --

MR. WENDT: Well, yeah, but you did read the quotation from U.S. v. Butler that where a citizen alleges an action in excess of authority, that the only recourse is to the courts?

THE COURT: Well, I am just --

MR. WENDT: I would hope you would address that.

THE COURT: I respectfully feel under these circumstances that I disagree with you.

MR. WENDT: Okay.

THE COURT: You know, my opinion speaks for itself. I could be wrong. I don't think I am. I have a fairly high degree of confidence in it. But that is in no way a reflection on, certainly, the thoughts that you have to the public transportation system. And all I can say to you is what I said to myself when I found myself at a younger stage of life really interested in these issues, was I plunged in. I got involved in Government with

mixed success. Although on a personal level, as everyone here can see, it has worked out rather well.

But, in any event, I am going to -- you don't need to say anything. I am going to deny the motion to recuse myself. I am going to deny the motion to amend the judgment. And I will stand on the things that I said in my first opinion.

But thank you for coming back a second time. I am sorry you had to go back and forth. But in the meantime I wanted to review everything that I did and reflect on it. So that is my decision. Thanks.

MR. BROOKS: I will just identify for the record, Sam Brooks.

THE COURT: Okay.

MR. BROOKS: And I apologize for being late, your Honor.

THE COURT: Accepted.

MR. BROOKS: Thank you.

THE COURT: Thank you

MR. WENDT: Are you going to issue another written opinion?

THE COURT: We will do a minute order denying the the motions for reasons stated on the record. Thank you.

MR. BROOKS: Thank you, your Honor.

THE COURT: If you would like to order a transcript, you can order one from Rosemary. Thanks.

(Proceedings concluded)

CERTIFICATE

I certify that the foregoing is a correct transcript of the record of proceedings in this case on October 12,, 2001.

s/Rosemary Scarpelli Official Court Reporter
Date 3/6/2001

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DISTRICT

WILLIAM F. WENDT, JR. Plaintiff,	]	No. 00 C 577
vs.	]	
	]	Chicago, Illinois
RODNEY SLATER. Secretary, United States Department of Transportation, Defendant.	]	May 3, 2001 9:00 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - MOTION
BEFORE THE HONORABLE WAYNE R. ANDERSEN

APPEARANCES:

For the Plaintiff: Mr. WILLIAM F. WENDT, JR.,
pro se
1651 Hubbard
Chicago, Illinois 60622

Court Reporter: ROSEMARY SCARPELLI
219 South Dearborn Street
Room 1412
Chicago, Illinois 60604
(312) 435-5815

THE CLERK: Case 0 C 577, Wendt versus Slater
THE COURT: Hi, Mr. Wendt.
MR. WENDT: William Wendt, plaintiff, pro se
THE COURT: Basically you have made two motions to vacate the judgment that the Court previously entered and then- and also to recuse myself. I am going to deny the motion to vacate the judgment, although I -- you know, I am genuinely amazed at the legal research and scholarship that you show doing it. But I disagree with the bases for it, so I am going to deny that.

With respect to the motion to recuse, since the case is terminated, I think that is a moot question. Were the case not terminated, I would not grant the motion. I don't think this case is like the other case which directly involved decisions of Mr. Hickman, as far as I could tell,

and was challenging the Tollway's decision at the time he was in charge of it.

However, your record is complete. If you appeal all this, I am-- I am stating these things so that if the Court of Appeals chooses to reverse, they will also have as part of the record your recusal motion. And oftentimes when when they reverse a case, they send it back with a requirement that another judge handle the case.

Unfortunately, I have not been favored with too many such directions, so I usually get them back. But they might be persuaded that my involvement with the people and the issues in the past is substantial enough so that they would like another judge to hear it.

MR. WENDT: What I should have put in that motion is that I have at least technically a lawsuit if judicial power- judicial authority, binding authority is the essence of judicial power. And you have completely ignored the binding authority that I have cited on both of my arguments, both the constitutional argument and the environmental argument.

THE COURT: Well, as a matter of---

MR. WENDT: And this is some- no, this is- you have decided a hypothetical case. I mean there is case law going back to the early days of the country that federal courts do not have the power to decide hypothetical cases. And the only reason I said I have a technical lawsuit against you is that just about every case on judicial immunity holds that when a judge acts outside his power, he is liable.

I am only saying "technical" because what I have found in my recent litigation in federal courts is that precedent is applied in a very selective manner. I said I have a technical lawsuit against three levels of federal courts over the complete ignoring of major portions of both the Rooker and Feldman decisions in the previous case, completely ignoring my citations of the Civil Rights Acts of 1866 and 1871.

Now, this Anastoff decision last fall has a very elegant- very concise but very elegant and, I think, you know, unjustly criticized case that the essence of judicial authority is binding authority.

Now, if you had mentioned- just at least mentioned the authorities that I cited, the authorities that I cited, the argument that I cited, that I had made, in denying this case last September -- now, if you just at least mentioned that, I rather doubt that I would have this case. But you have ignored it. So -- and then you were not forthcoming about your disqualification, including the fact that -- you know, I am certainly grateful to Mr. Walliser for bringing this to my attention -- his case came up after mine was closed -- that you were an attorney for the Illinois Department of Transportation which is very heavily involved with the same type of program I am objecting to.

THE COURT: Well --

MR. WENDT: And I mean it is very bad faith on your part.

THE COURT: Rather than slightly bad faith. I don't think there is any bad faith at all. The fact that I represented the Illinois Department of Transportation 20 years ago in a couple condemnation matters I do not think would -- enables me to escape my responsibility to try to fairly decide the cases that are presented to me.

However, those are my rulings.

MR. WENDT: Will I get this in writing?

THE COURT: Pardon me? No.

MR. WENDT: Will I get this in writing?

THE COURT: You can order a transcript from Rosemary.

MR. WENDT: I think that is a very bad practice too.

THE COURT: I know.

MR. WENDT: Because I think there should be written reasons set forth.

THE COURT: Well --

MR. WENDT: That article --

THE COURT: Well, that is nice --

MR. WENDT: That article that --

THE COURT: Mr. Wendt, that is nice of you to think that. And you are obviously a thoughtful and prolific writer. But the simple fact is there is no legal requirement that things be in writing. The legal requirement is that there be open and public proceedings, which these are. And indeed this Court,

unlike many courts in the land, even provides a court reporter. In many courts you would have to hire your own court reporter to come in.

And there is simply not time to write down a reason for every decision that I have to make. That is particularly true in a case such as yours where you provide so many legal theories, as you did in this most recent motion and previously as well. So that is my decision.

MR. WENDT: Which again are going unaddressed.

THE COURT: That is my- they are not going to be addressed in writing. They are not going to be addressed one by one on the record. The case was terminated when it was- when I entered the order last fall. And I am not going to reconsider that.

Am I right? I think I am right. Am I- do I know I am right? No, not at all.

MR. WENDT: Yeah.

THE COURT: I could be wrong. And under our system, you know, that is what the Court of Appeals sits there to do, as far as I know.

As I said to you before, I suggest it to you again -- and this is in a positive sense -- you have a lot of good thoughts regarding public policy and I suggest that you enter the public policy debate rather than expending enormous energies on what,

MR. WENDT: Well I have been -- I have been involved in this public policy debate for over 20 years. I know what this is in this town. I don't need to be told what goes on in the federal -- you know, the federal transit programs. And that is why I brought this lawsuit. And again the grievance has gone unaddressed.

THE COURT: Well --

MR. WENDT: And I would like to just -- just -- I mean I --

THE COURT: I have to get on to other cases.

MR. WENDT: Well, I would just like to say just for the record, anyway --

THE COURT: Fine.

MR. WENDT: -- at least for the record that Hitler, Mao, Castro, and Khomeini all came to power on very

legitimate grievances. And the federal courts are supposed to redress grievances. We are supposed to have a very elaborate set of laws, procedures, with elections and freedom of speech and court procedures, and so on, to redress grievances.

And if this is all you think of redress of grievances, well, you know -- I mean history has said a few things and -- you know, and I would like to just again mention that book that came out last fall by -- what that -- you know, that I mentioned in the case, that, you know, the Nazis are much more candid. They gave the Nazis being -- credit for being much more candid about the way they did things than the way the American establishment is doing it today. So --

THE COURT: Thank you. Thanks.

(Proceedings concluded)

CERTIFICATE

I certify that the foregoing is a correct transcript of the record of proceedings in this case on May 3, 2001.

s/Rosemary Scarpelli Official Court Reporter
Date 5/24/2001

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

January 28, 2002

Before

Hon. RICHARD A. POSNER, Circuit Judge
Hon. ILANA DIAMOND ROVNER, Circuit Judge
Hon. ANN CLAIRE WILLIAMS, Circuit Judge

WILLIAM F. WENDT, JR., Plaintiff-Appellant,	Appeal from the United States District Court for the Northern District of
No. 01-2709 v.	Illinois, Eastern Div.
RODNEY SLATER, Secretary of the United States Department of Transportation, Defendant-Appellee.	No. 00 C 577 Wayne R. Andersen, Judge

Upon consideration of the **MOTION FOR RECONSIDERATION,** filed on January 3, 2002, by the pro se appellant,

IT IS ORDERED that the motion is **DENIED.**

CONSTITUTIONAL PROVISIONS AND STATUTES

Article I, Section 8, Clause 1, in pertinent part

The Congress shall have Power To ... provide for the common Defence and general Welfare of the United States...

Article III, Section 2, in pertinent part

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution (and) the Laws of the United States...; ... -to Controversies to which the United States shall be a Party...

Fifth Amendment, in pertinent part

No person shall... be deprived of life, liberty, or property, without due process of law...

Thirteenth Amendment:

§1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

§2. Congress shall have power to enforce this article by appropriate legislation.

Civil Rights Acts of 1866 and 1870, in pertinent part:

All persons within the jurisdiction of the United States shall have the same right in every State... to sue...

42 United States Code 4332 (National Environmental Policy Act), in pertinent part:

§4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act ..., and (2) all agencies of the Federal Government shall...

(C) include in every major recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on-

(i) the environmental impact of the proposed action.

(iii) alternatives to the proposed action, ... and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented...

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative use of available resources.

49 United States Code §5301 et. seq., in pertinent part:

§5307 Block Grants

(e) GOVERNMENT'S SHARE OF COSTS.- A grant of the Government for a capital project ... under this section is for 80% of the net project cost...

§5309 Capital investment grants and loans

(a) GENERAL AUTHORITY.- (1) The Secretary of Transportation may make grants and loans under this section to assist State and local authorities in financing-

(A) capital projects for new fixed guideway systems...;

(B) capital projects... needed for an efficient and coordinated mass transportation system;

(C)... (H)...;

(e) CRITERIA FOR GRANTS AND LOANS FOR FIXED GUIDEWAY SYSTEMS-

(1) IN GENERAL.- The Secretary may approve a grant or loan under this section for a capital grant or project for a new fixed guideway system only if the Secretary determines that the proposed project is-

(A) based on the results of an alternatives analysis and preliminary engineering;...

(C) supported by an acceptable degree of local financial commitment...

(3) PROJECT JUSTIFICATION.- In evaluating a project under paragraph (1)(B), the Secretary shall-

(A) consider the direct and indirect costs of relevant alternatives;

(B) ... (H).

(4) LOCAL FINANCIAL COMMITMENT.- ...

Supreme Court Rule 10, in pertinent part:

Review on a writ of certiorari is not a matter of right, but of judicial discretion...

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 01-2709

WILLIAM F. WENDT, JR.	)	Appeal from the
Plaintiff-appellee	)	United States District
	)	Court for the Northern
v.	)	District ofIllinois
NORMAN MINETA,[1]	)	No. 00 C 577
Secretary of the United States	)	
Department ofTransportation,	)	Wayne R. Andersen,
Defendant-Appellee.	)	Judge

DEFENDANT-APPELLEE'S MOTION
FOR SUMMARY AFFIRMANCE

Defendant-appellee, Norman Mineta, Sceretary, United States Department of Transportation, by his attorney, Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, in the interests of judicial economy, moves for summary affirmance of the district court's decision, without further briefing, which would be unnecessary and wasteful. In support of this motion, defendant-appellee states as follows:

1. In his *pro se* complaint, plaintiff-appellant, William F. Wendt, Jr. ("Wendt"), brought a generic indictment against the entire mass transit system of the City of Chicago and set forth his vision of the most appropriate alternative: the monorail. R.1-1 at 1-8.[2] In particular, Wendt's complaint sought an order of mandamus requiring the Secretary to consider alternative mass transit technologies, an order halting federal funding of local transportation projects or, alternatively, a declaration that federal funding of local

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[1] Norman Mineta has succeeded Rodney Slater as Secretary of the United States Department of Transportation and is substituted in this case pursuant to Fed. R. Civ. P. 25(d).

[2] "R." references are to numbered items in the Record on Appeal. "Wendt Br." references are to the numbered pages of Appellant's Brief.

transportation projects required an Environmental Impact Statement. *Id.* at 8.

2. On April 26, 2000, the Secretary filed a motion to dismiss pursuant to Rules 12(b)(1) and (6), Fed. R. Civ. P., asserting that (1) the court was without jurisdiction because Wendt lacked standing to bring suit, and (2) that Wendt's complaint failed to state a claim because Wendt failed to challenge any specific agency action. R. 5.

3. By memorandum opinion and order, the district court granted the Secretary's motion and entered judgment dismissing Wendt's complaint on September 29, 2000. R. 14-15. The court held that Wendt lacked standing because: (a) the district court was not the proper forum to air generalized grievances with Chicago's public transportation system, and (b) Wendt failed to specify how the Secretary's actions caused him any alleged injury. R. 14 at 1-6. The court also held that Wendt could not establish standing as a taxpayer because he failed to challenge any specific legislative enactment or identify a particular constitutional provision prohibiting such enactment. R. 14 at 5-6. Finally, the court held that the National Environmental Protection Act did not provide a private right of action for alleged violations of its provisions and further held that Wendt could not proceed under the Administrative Procedures Act because he was challenging the implementation of the entire mass transit program in Chicago rather than a final agency action. *Id.*

4. Wendt filed a timely motion to alter or amend pursuant to Rule 59(e), Fed. R. Civ. P., on October 2, 2000, complaining of a "sick, inbred, supercilious, self-justifying, endlessly pettifogging, Alice-in-Wonderland 'legal community' that ignores or trivializes unwelcome challenges to 'business as usual.'" R. 16 at 1. Among other contentions, Wendt's motion accused the court of ignoring binding authority, engaging in a "nasty little 'legal practice' [of] 'burden shifting,'" and forcing Wendt to "belabor the obvious." R. 16 at 1-11.

5. At an October 12, 2000 status hearing attended by Wendt, the court explained that it would stand on its prior opinion, denied Wendt's motion to alter or amend, and notified Wendt that a minute order would issue

denying his motion for reasons stated on the record. R. 19-3 at 4. Thereafter the court's minute order was docketed on October 16, 2000. R 18,

6. On April 6, 2001, Wendt filed a "Motion for Relief from Purported Judgment" pursuant to Rule 60(a), (b)(1), (b)(3), and (b)(4), seeking relief from the court's order denying his prior motion to alter or amend on the creative grounds of:

> clerical error, mistake, fraud upon the court, denial of due process for lack of notice, denial of due process in the form of an unpublished opinion when novel legal questions were presented, void judgment ignoring binding authority and deciding a hypothetical case, and deprivation of due process in the form of an unresponsive unpublished opinion because of judicial overload attributable largely to cases brought under overly Hamiltonian, impossibly complicated and otherwise unconstitutional laws, over which this case should be given priority.

R. 20 at 1. At a May 3, 2001, status hearing attended by Wendt, the court denied his motion; a minute order reflecting dismissal was docketed on May 4, 2001. R. 22.

7. On June 28, 3001 Wendt filed a notice of appeal which was timely only with respect to the court's order denying his Rule 60(b) "Motion for Relief from Purported Judgment." R. 22.

8. Review of an order denying Rule 60(b) relief is extremely deferential and and only for abuse of discretion. *Publicis Communication v. True North Communications, Inc.,* 206 F. 3d 725, 730 (7th Cir. 2000). An order denying Rule 60(b) relief will be affirmed unless no reasonable person would concur with the ruling. *McCormick v. City of Chicago,* 230 F.3d 319, 326-27 (7th Cir. 2000). Rule 60(b) provides an extraordinary remedy limited to exceptional cases and cannot be used as a means to correct erroneous applications of law. *McCormick*, 230 F.3d at 327; *Russell v. Delco Remy Div. of Gen'l Motors Corp.*, 51 F.3d 746, 749 (7th Cir. 1995). Thus, "[t]he ground for setting aside a judgment under Rule 60(b) must be something that could not haye been used to obtain a reversal by means of a direct appeal." *Bell v. Eastman Kodak Co.*, 214 F.3d 798, 801 (7th Cir. 2000).

9. On October 9, 2001, more than one year after the district court's dismissal of his complaint, Wendt filed an appellate brief contending that: federal funding of local mass transit projects is unconstitutional; he had stnding as a taxpayer to challenge federal funding; there is a federal responsibility for informed decision making; the quality of urban life is a justiciable question; and finally, that the court abandoned the judicial process by failing to address Wendt's citations of allegedly binding authority. Wendt Br. at 2-24. However, none of the presented arguments are within the parameters of Rule 60(b); instead, he has presented arguments which should have been asserted in a timely direct appeal. Thus, Wendt's arguments are outside the scope of issues which he can now raise in an appeal which can *only* relate to the district court's denial of his "Motion for Relief from Purported Judgment." *Browder v. Director, Department of Corrections,* 434 U.S. 257, 263 n.7 (1978)("[A]n appeal from denial of Rule 60(b) relief does not bring up the underlying judgment for review."); *Bell,* 214 F.3d at 801.

10. As this Court observed in *Mather v. Village of Mundelein,* 869 F.3d 356, 357 (7th Cir. 1989), "[m]otion papers, in conjunction with the record and the district court's opinion, may show the appropriate disposition with sufficient clarity that a call for briefs would be nothing but an invitation for the parties to waste their money and the court's time." Moreover this Court noted that "[i]t is gratuitous cruelty to put counsel through the exercise of writing briefs... when the outcome is foredoomed." *Mather,* 859 F.2d at 558. This case meets the *Mather* criteria in that Wendt has failed to advance any reviewable argument on appeal.

11. Even read liberally, it is impossible to discern a viable cause of action in Wendt's complaint. Instead, his complaint primarily sought to use the court as a political forum to decry Chicago's mass transit system and advocate implementation of his personally preferred alternative. Similarly, it is impossible to discern a reason to disturb the district court's denial of Wendt's "Motion for Relief from Purported Judgment" from his appellate brief. *A-Abart Elec. Supply. Inc. v. Emerson Elec. Co.,* 956 F.2d 1399, 1406 (7th Cir. 1992)(summary

affirmance is appropriate when the appeal "merely restates arguments that the district court properly rejected.") Instead Wendt's brief is little more than a rambling diatribe against the judiciary for not accepting his arguments and the federal government for not accepting his proposed mass transit alternatives. It would be difficult to engage in a serious *legal* discussion of the issues. As such, summary affirmance is appropriate.

WHEREFORE, defendant-appellee requests that the court grant this motion and summarily affirm the district court's decision without further briefing. Should the court deny this motion, defendant-appellee requests thirty (30) days to file his brief.

Respectfully submitted,

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No. 01-2709
IN THE 7th CIRCUIT COURT OF APPEALS

WILLIAM F. WENDT, Jr.,	)	No. 00C0577
Plaintiff, Pro Se	)	Judge
v.	)	ANDERSON
NORMAN MINETA, Secretary,	)	Magistrate
United States Department of	)	Judge
Transportation, Defendant	)	ROSEMOND

RESPONSE TO MOTION
FOR SUMMARY AFFIRMANCE

William F. Wendt, Jr., plaintiff-appellant, pro se, objects to newly substituted defendant Norman Mineta's MOTION FOR SUMMARY AFFIRMANCE on the following grounds:

1. However incomplete the socialization of poor pro se plaintiff-appellant Wendt into the inscutable, impenetrable world of the legal profession (RESPONSE TO RULE TO SHOW CAUSE- PRO SE APPELLANT, p8, ¶20), he has been around long enough to have heard the old lawyers' adage: If your case is strong on the law, emphasize the law, if strong on the facts, emphasize facts, and if weak on law and facts, yell and pound the table. The last is exactly what newly substituted defendant Norman Mineta has done in his MOTION FOR SUMMARY AFFIRMANCE in what might be described as a technically ingenious but judicially ominous attempt to collaterally attack Wendt's brief, while failing entirely to address its merits and issues, on review as in the trial court.

2. One point, alone, ought to defeat Mineta's motion. However technically ingenious, or technically desperate, as the case may be, Mineta really should have been technically astute enough to read the fine print in the order he wishes to summarily affirm. See order of May 3, 2001 (App. 3, Doc. 22), in which the trial court said, first, p2, and second, pp5-6, affirming a complete scope of Wendt's appeal:

"However, your record is complete. If you appeal all this, I am-- I am stating these things so that if the Court of Appeals chooses to reverse, they will also have as part of the record your recusal motion...."

"And there is simply not time to write down a

reason for every decision that I have to make. That is particularly true in a case such as yours where you provide so many legal theories, as you did in this most recent motion and previously as well. So that is my decision."

"That is my- they are not going to be addressed in writing. They are not going to be addressed one by one on the record. The case was terminated when it was- when I entered the order last fall. And I am not going to reconsider that.

"Am I right? I think I am right. Am I- do I know I am right? No, not at all. ...

"I could be wrong. And under our system, you know, that is what the Court of Appeals sits there to do, as far as I know."

Again, Wendt has been around long enough to know how lawyers can see ambiguity in anything, but there is more than ample reason to resolve any ambiguity in Wendt's favor.

3. Another point, alone, ought to defeat Mineta's motion. None of Mineta's authorities deal with an attack on the underlying judgment as void. Several of his citations use rather loose language regarding other provisions of Rule 60(b) as if they were the whole rule. Wendt's MOTION FOR RELIEF FROM PURPORTED JUDGMENT (App. 10; Doc. 20), however, thrice attacked the underlying judgment as void, twice as a violation of due process (pp7-8, the first based on lack of notice) and as beyond the power of the court (pp8-12). There is no time limit for attacking a void judgment under Rule 60 (b)(4). The first due process question, regarding a lack of notice of the October 12 ruling, Wendt considers resolved by the trial court's affirmance of his rights of appeal and by the repetition of the original ruling, which, even by Mineta's logic, leaves it subject to attack.

4. Mineta's own final citation, A-Abart Elec. Supply, Inc. v. Emerson Elec. Co. 956 F.2d 1399, 1406 (7th Cir 1992), refers to cases properly decided. Even from Mineta's own jaundiced, straw man account, however, it should be plain enough that Wendt attacked, even attacked quite vigorously, the propriety of the trial court decision(s). And if Wendt hasn't missed anything, Mineta has yet to defend the trial court decision as proper,

even against Wendt's attacks upon it as void, on review or trial. As noted in the brief, pp15-16, even the trial court failed to defend it from this attack. Mineta's motion is yet again the Saddam Hussein approach, *"Don't talk to me about the law. The law is anything I write on a scrap of paper,"* which Wendt cited in his petition and motions of July 20, 2001 (and which he would reference, except he cannot see where they have been read beyond the captions). Actually, as we can see from the above quotes, the trial court said in so many words it simply does not have the time to answer Wendt's legal questions, in other words, Wendt has been denied access to the court because of a case overload. This again shows the underlying decision as void and confirms Wendt's case that he has been denied due process because of too many unconstitutional laws on the books, MOTION FOR PRIORITY OVER CASES ENFORCING UNCONSTITUTIONAL, OVERLY HAMILTONIAN LAWS, filed July 20, 2001 and denied without reason, August 6, 2001.

5. Furthermore, as Wendt noted in his MOTION FOR JUDGES FROM OUTSIDE THE 7th CIRCUIT AND FOR ADDITIONAL MEASURES, July 20, 2001, and likewise denied August 6, 2001, a void judgment leaves the trial court little leeway, quite unlike the other provisions addressed in Mineta's citations:

"...Similarly, a judgment may be void for purposes of Rule 60(b)(4) if the court, although having jurisdiction over the parties and subject matter, entered a decree 'not within the powers granted to it by the law.' United States ex rel. Wilson v. Walker, 109 U.S. 258, 266, 3 S.Ct. 277, 282, 27 L.Ed 927 (1883); see also United States v. Zima, 766 F.2d 1153, 1159 (7th Cir. 1985)(void judgment exists where court renders a judgment 'over matters beyond the scope of authority granted to it by its creators') (quoting Ben Sager Chemicals International, Inc. v. E Targosz & Co., 560 F.2d 805, 812 (7th Cir. 1977)); V.T.A., Inc. v. Airco, Inc., 597 F.2d 220, 224 (10th Cir. 1979)(judgment is void under Rule 60(b)(4) if the rendering court was powerless to enter it). Although ordinarily a district judge has broad discretion in the application of Rule 60(b), Connecticut National Mortgage Co. v. Brandstatter, 897 F.2d 883, 884 (7th Cir. 1990), this is not true with respect to motions brought under Rule

60(b)(4). Because void judgments are legal nullities, district courts have little leeway. Bally Export Corp. v. Balicar, Ltd., *804 F.2d 398, 400 (7th Cir. 1986) If the underlying judgment is void, it is a per se abuse of discretion for a district court to deny a movant's motion to vacate the judgment under Rule 60(b)(4). Id."* U.S. v. Indoor Cultivation Equipment, 55 F.3d 1311, 1316-1317 (7th Cir. 1995)

6. Yet another point upon which Mineta's motion may be denied is the Rule 60 (a) matter, MOTION FOR RELIEF FROM PURPORTED JUDGMENT, p5, raising the question whether the ambiguous order of October 12, 2000 (App. 3; Doc. 18) was intended to be final. At least the order of May 3, 2001 clarified the trial court's intentions not to furnish any more reasons. At least Mineta's ¶5 says on October 12 the trial court said it would issue a minute order denying the motion, and that it was docketed on October 16. That is the minute order Wendt never received, the docket sheet entry saying quite plainly, "no notice" (appended to Wendt's motion), and giving rise to Wendt's attacks on clerical error and violation of due process.

7. If any of these considerations is sufficient to deny Mineta's motion, the motion is sufficiently misleading and prejudicial that further analysis is needed, not merely to counter the motion, but to counter gross, indefensible prejudice against Wendt's case and status, prepare a case for sanctions against counsel, and perhaps strengthen rules against frivolous, misleading argument.

8. Jerome Frank, Courts on Trial: Myth and Reality in American Justice, Chapter VI, "The 'Fight' Theory versus the 'Truth' Theory," is, among other things, a catalog of lawyers' dirty tricks to discredit witnesses and make them look bad. Bad enough in the subjective fact-determining process, they have no place in the supposedly objective law determination process. Mineta's motion is a sufficient misrepresentation of Wendt's case and appeal to prejudice to qualify as such dirty tricks.

9. The prejudice against pro se litigants was given a rare glimpse by trained legal professionals in John P. Flannery and Ira P. Robbins, PRO SE

LITIGATION The *Pro Se* Litigant: More Than A Pawn in the Game, 41 Brooklyn Law Review 769 (1975). The summary says in full, the first two sentences being fully congruent with Wendt's experiences:

"Too often, the bar and the bench have regarded, treated, and disposed of those who proceed without counsel as, at best, outsiders. As a result, all parties lose- not only the pro se *petitioner, but also those who presume that the* pro se *petitioner has a worthless claim, or worse, that he himself is somehow worthless because he has no counsel. The authors, with a combined total of four years' experience as* pro se *law clerks for the Second Circuit, argue that the* pro se *petitioner plays a valuable role in our courts, and should not be underestimated.*

"There are those who recognize that the opportunity to proceed without counsel in our system prevents a stranglehold on justice by lawyers. They respond to the individual pro se *petitioner with the same careful and thorough preparation which marks their other legal work. The authors urge the remainder of the legal community to subscribe to the same procedure, underscoring the successes of some of the* pro se *petitioners whose cases are discussed herein."*

10. Mineta's motion, ¶1, characterizes Wendt's complaint as a "generic" attack on the Chicago transit system, as opposed to a brand name attack, perhaps. One could read it that way, if, more precisely, it is an attack on the enormously expensive replacement in kind of the same existing technologies, and, yet more precisely, on the federal funding of that replacement. If opposing counsel simply wants to go on replacing existing transit technologies in kind, one without basic improvement in a century, the other in some 45 years, with no further consideration, let's see him produce his legal papers on manual typewriters with carbon paper as they did a century ago. At least the "Chicago" reference localizes the matter for environmental purposes. Brief, p15. If Wendt has indeed failed as a Philadelphia lawyer, it is for not amending his complaint to include the proofs offered by Mineta's predecessor, as cited in his MOTION FOR SUMMARY JUDGMENT (App. 6; Doc. 13, pp1-2) and the brief, pp6-7, there stat-

ing, without objection, they transcend any defects in the complaint, and to include some argument of law, below.

11. Mineta, ¶3, misstates the very court order he would have summarily affirmed, indirectly (App. 3, Doc. 22, pp5-6), that Wendt has not identified any legislation as unconstitutional or any violated provision of the Constitution, when the order states that Wendt's complaint failed to make any such identification. Why in the world he brings this up is quite beyond Wendt's comprehension, except to smear Wendt or mislead this Court, or what it would accomplish, upon further analysis, except to expose that order to outright ridicule. Wendt took immediate exception in his MOTION TO ALTER OR AMEND (App. 9: Doc. 16, pp1-2), likewise on October 5 (App. 4, Doc. 17, p8), as if everything had to be in the complaint and everything else is ignored. Mineta's predecessor identified the legislation in seeking to dismiss in the trial court, and, if Wendt must be burdened with identifying it as well, he found it quite sufficient to cite in his trial court MOTION FOR SUMMARY JUDGMENT (App. 6; Doc. 13, pp1-2, 4, 9), citing Mineta's now inherited facts in lieu of anything in the complaint. The trial court order of September 19, 2000, p2, had no trouble identifying it as 49 U.S.C. §5301 and recognizing it assisted localities in funding transportation projects. Wendt's brief, pp6-7, repeats the predecessor's description of this program, which Mineta has yet to address. His same paragraph cites the order as saying, p2, that Wendt has not identified any final agency action, as if the program proceeded without final agency action, as if Wendt has to prove jurisdictional facts in the pleading stage. In response to Wendt's objection that he does not, the trial court agreed. (App. 4; Doc. 17, pp 8, 12)

12. Wendt's criticism of the legal system (App 9; Doc. 16, p1), quoted out of context in Mineta's ¶4, is stated more fully here. Wendt stands by it fully, and will continue to do so, at least until he sees sufficient change that it is no longer valid:

"1. Denouncing the other side's briefs as an invitation to abandon the judicial function, in a state appellate court reply brief filed in January 1997 (Wendt v. University of Illinois, et. al., 96-0853), Wendt

concluded he could easily see how innocent men wind up on Death Row. The matter is now before the Supreme Court of the United States (00-325), the state court having accepted that invitation, and the lower federal courts presuming to reject an argument without mentioning it. For all the official hand-wringing over innocent people on Death Row, there seems to be precious little realization that this is just the visible tip of the iceberg, the underlying problem, at least in Wendt's estimation, being a sick, inbred, supercilious, self-justifying, endlessly pettifogging, Alice-in-Wonderland 'legal community' that ignores or trivializes unwelcome challenges to 'business as usual.' Well trained in the art of arguing both sides of the case, it is just as adept at taking legal smokescreens as cogent, well founded positions. Though far removed from a death sentence in formal legal consideration, the order in this matter entered September 19, 2000 could well turn into a textbook example of how the legal system goes wrong, at least if Wendt has anything to do with it."

13. Wendt might be getting a little touchy after all this, but he has to wonder if "creative" as used in Mineta's ¶6 is meant or taken as it is in "creative accounting." From what Wendt understands of legalese, "novel" would be a more appropriate term.

14. If not a "pleading" in the narrow sense of the word and thus not subject to a motion to strike, Mineta's motion comes perilously close to other criteria for such a motion. Moore's Federal Practice, 3rd ed., §12.37

15. Wendt does agree no further briefing is necessary; he does not need to "torture" the other side with admitting he is right, the theoretical obligation of government attorneys to do justice, or attorneys in general, notwithstanding. Mineta and his predecessor have had more than ample opportunity over now close to two years to seriously dispute the substance of Wendt's case and have utterly failed to do so. If poor pro se Wendt might be so unlawyerly as to emphasize both law and fact, Mineta is in an exceedingly poor position to dispute the facts he inherited, or even that they transcend any defects in the complaint, Wendt's brief, p6, ¶33. His only dispute of Wendt's principal case, U.S. v. Butler, 297 U.S. 1, 63-67, was that it applies only to taxes and farmers. (App. 7;

Doc. 11, p4) His only dispute with Wendt's claim of standing danced around the argument with superseded citations. And his latest motion only goes to show yet again his disdain for informed decision-making.

16. If Wendt were that much of a bean counter or Philadelphia lawyer, he would count how many times he has presented his "stare decisis trilogy" on binding authority and the integrity of the court, in this and the previous case, Wendt v. Univ. of Ill., et.al., No. 99-3409, without the slightest response from court or counsel. Never mind the issue of court integrity. Suffice to say that same trilogy is now before this Court, brief, pp22-23, ¶¶83-85, and that integrity of the courts is an overdue issue in this case and the previous one.

17. With nothing on the table from the other side, Wendt has to wonder what is under it. He has already taken a strenuous position against special pleading by prominent parties in his previous lawsuit, considering it influence peddling or an attempt to intimidate the court, also beyond judicial and prosecutorial immunity (which again he would reference, except again he cannot see where any of that has been read). If the United States government would try to slam the courthouse door with such ill-begotten, mendacious technical sophistry as presented here, then how low would it stoop? Former Chief Federal District Judge Charles Wyzanski, at the time considered the most eminent trial judge in the country, gave one part of the answer in Lord v. Kelley, 240 F. Supp, 167, 169:

"More than once the judges of a court have been reminded that they personally are taxpayers. No sophisticated person is unaware that even in this very Commonwealth the Internal Revenue Service has been in possession of facts with respect to public officials which it has presented or shelved in order to serve what can only be called political ends, be they high or low. And a judge who knows the score is aware that every time his decisions offend the Internal Revenue Service he is inviting a close inspection of his own returns..."
(which seems to Wendt the best explanation why the federal courts have rejected the "wages not income" argument some six dozen times without ever addressing it, as Wendt argued July 20, 2001)

18. Somewhat more explicit is State Bar of Nevada v. Claiborne, 104 Nev. 115, 756 P.2d 464 (1988), almost 90 pages of court opinion, exhibits, and concurrence on the sandbagging by federal agents of former Federal District Judge Harry Claiborne, the first federal judge in recent years to be impeached. The concurring opinion says in conclusion at 551,

"... One of the greatest bulwarks for freedom in this country is our independent, life-tenured federal judiciary. It is vitally important, therefore, for the notion never to gain credence that a United States District Judge can be easily targeted, discredited, and destroyed. Whenever such an effort to discredit and destroy a federal judge is undertaken, I think it is essential that any suspect facts concerning the undertaking shall be made known..."

"... it may be fortunate for our country's system of checks and balances that the targeting and pursuit of the United States District Court judge here in question has not ended with his total annihilation..."

19. Regarding former Federal District Judge Alcee Hastings, the second or third to be impeached in recent years, it seems the FBI presented tainted evidence against him. **New York Times**, February 26, 1997, A 16:4, February 28, 1997, A 22:3. Significant to Wendt is simply that the attempt was made. The process of a coerced court is, of course, void. Moore v. Dempsey, 261 U.S. 86.

20. The order of September 19, 2000, p4(a), cites Valley Forge Christian College v. Americans United, 454 U.S. 464, 474-475, beginning with a discussion of the need to maintain confidence in the courts. If it might indeed be undermined by judicial intrusion into genuine political questions, it might be undermined just as readily by abstention from genuine judicial questions. What did Pontius Pilate do for the Roman judiciary? What kind of confidence in the federal courts would anyone have after reviewing this case so far, or, for that matter, Wendt's previous case in this Court, Wendt v. Univ. of Ill., et.al., No. 99-3409? Wendt introduced numerous items into the record in his motions of July 20, 2001 showing a greatly diminished confidence in the federal judiciary among various opinion leaders because

of unpublished opinions. The federal judiciary would be in deep trouble indeed if Wendt's lack of confidence became widespread. That sort of damage is very, very difficult to repair.

21. The $600 million Bears stadium project is proceeding, even though the judge presiding over a lawsuit against it by well known civic organizations warned the Bears they are proceeding at their own risk. **Chicago Tribune**, November 6, 2001, Sec. 2, p1. There is a perception in some circles that courts will simply not intervene in such matters, stated less delicately, that they simply do not have the backbone to lay down the law to prominent parties in such situations. The plaintiffs' case seems well founded in book law, as Wendt has seen so far, if somewhat contrary to "custom and usage." Wendt experienced a similar situation in his U of I lawsuit, even attaching an article from a U of I publication about the project going ahead to his still ignored reply brief, and has nothing to show for it, except still unanswered jurisdictional questions (which yet again he would reference, except yet again he cannot see where any of that has been read). The projects involved in this matter are of far greater scope. The facts and law in this matter are by now beyond dispute, nevertheless, if not from the beginning, and so is the judicial duty, that is, if there is more to judicial duty than the legalistic harrumphing Wendt has gotten so far.

Wherefore William F. Wendt, Jr., plaintiff-appellant, pro se, objects to newly substituted defendant Norman Mineta's MOTION FOR SUMMARY AFFIRMANCE.

William F. Wendt, Jr.
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No. 01-2709

IN THE 7th CIRCUIT COURT OF APPEALS

WILLIAM F. WENDT, Jr.,	)	No. 00C0577
Plaintiff-Appellant, Pro Se	)	Judge
	)	ANDERSON
v.	)	Magistrate
NORMAN MINETA, Secretary,	)	Judge
United States Department of	)	ROSEMOND
Transportation, Defendant-Appellee	)	

PETITION FOR REHEARING EN BANC

William F. Wendt, Jr., plaintiff-appellant, pro se, petitions for rehearing en banc of the order of November 20, 2001 summarily affirming the trial court order of May 3, 2001 on the following grounds of extraordinary importance, also adopting those submitted in the petition for en banc consideration on July 20. 2001:

WRONG CAPTION

1. The caption of the order still names the former United States Secretary of Transportation, Rodney Slater, not his successor, Norman Mineta, even though

(1) the order of November 20, 2001 says, or seems to say, all filings in the case have been carefully reviewed,

(2) Mineta's motion of November 7, 2001 for summary affirmance plainly, obviously substitutes Mineta for his predecessor Slater, and

(3) Wendt's response of November 16, 2001 plainly substituted Mineta in the caption and referred numerous times in so many words to Mineta or his predecessor.

2. The order was issued four days after Wendt's filing, only two of them business days. This is unusually fast for appellate dispositions, which usually take weeks or months. If justice must have the appearance of justice, Marshall v. Jerrico, Inc., 446 U.S. 238, 243, the order of final disposition must have at least the appearance of the caption having been read, and of taking enough time to do even that. If Wendt has in the past at least given this Court credit for reading the captions of his pleadings, he cannot do even that in this instance.

3. Wendt claimed *de novo* review in his brief, a point unaddressed by either the Court or the other side.

The order, apparently disposing of the case a mere two business days after Wendt's last filing, defeats the purposes of *de novo* review, most certainly when even the caption is wrong, per Moore's Federal Practice 3D, §52.32[2]:

"There are sound reasons for allowing de novo *review of conclusions of law. First, appellate judges can concentrate on legal questions because they are not encumbered by the vital, but time-consuming, process of hearing witnesses and evidence. Second, the judgment of at least three members of an appellate panel is brought to bear on every case. It stands to reason that the collaborative process of an appellate court reduces the risk of judicial error on questions of law.* De novo *review of questions of law serves to minimize judicial error...."*

4. Expanding at length upon *de novo* review and its purposes, Salve Regina College v. Russell, 499 U.S. 225, 231-233 (1991), set forth the proper functions and duties of an appellate court, thus making the order of November 20 look like a very bad joke:

"We conclude that a court of appeals should review de novo *a district court's determination of state law. As a general matter, of course, the courts of appeals are vested with plenary appellate authority over final decisions of district courts. See 28 U.S.C. 1291. The obligation of responsible appellate jurisdiction implies the requisite authority to review independently a lower court's determinations.*

"Independent appellate review of legal issues best serves the dual goals of doctrinal coherence and economy of judicial administration. District judges preside alone over fast-paced trials. Of necessity they devote much of their energy and resources to hearing witnesses and reviewing evidence. Similarly, the logistical burdens of trial advocacy limit the extent to which trial counsel is able to supplement the district judge's legal research with memoranda and briefs. Thus, trial judges often must resolve complicated legal questions without benefit of 'extended reflection [or] extensive information.' (citation)

"Courts of appeals, on the other hand, are structurally suited to the collaborative juridicial process that promotes decisional accuracy. With the record

having been constructed below and settled for purposes of the appeal, appellate judges are able to devote their primary attention to legal issues. As questions of law become the focus of appellate review, it can be expected that the parties' briefs will be refined to bring to bear on the legal issues more information and more comprehensive analysis than was provided for the district judge. Perhaps most important, courts of appeals employ multijudge panels... that permit reflective dialogue and collective judgment. Over 30 years ago, Justice Frankfurter accurately observed,

"'Without adequate study there cannot be adequate reflection; without adequate reflection there cannot be adequate discussion; without adequate discussion there cannot be that fruitful interchange of minds which is indispensable to thoughtful, unhurried decision and its formulation in learned and impressive opinions.' (citation)

"Independent appellate review necessarily entails a careful consideration of the district court's legal analysis, and an efficient and sensitive appellate court will naturally consider this analysis in undertaking its review.... Any expertise possessed by the district court will inform the structure and content of its conclusions of law and thereby become evident to the reviewing court. If the court of appeals finds that the district court's analytical sophistication and research have exhausted the state-law inquiry, little more need be said in the appellate opinion. Independent review, however, does not admit of unreflective reliance on a lower court's inarticulable intuitions...." (emphasis added)

5. There has been nothing close to independent review in this case by those standards, no discussion of the merits, no reflection, no study, no interchange of minds, etc., on trial or review, only a lack of desire for further briefing, nothing more than "unreflective reliance" and "inarticulable intuitions." And after a whole two business days of "careful() review()," this Court cannot even get the caption right.

6. Sufficient time for adequate decision-making is exactly what the trial ourt did not have, plainly stated in the order summarily affirmed. As Wendt quoted the trial court order of May 3, 2001 (App. 3, Doc. 22, pp2, 5-6)

in his response, ¶2, the trial court not only affirmed a complete scope of Wendt's appeal and questions for the Court of Appeals, but expressly said issues went unaddressed for lack of time:

"However, your record is complete. If you appeal all this, I am-- I am stating these things so that if the Court of Appeals chooses to reverse, they will also have as part of the record your recusal motion...."

"And there is simply not time to write down a reason for every decision that I have to make. That is particularly true in a case such as yours where you provide so many legal theories, as you did in this most recent motion and previously as well. So that is my decision."

"That is my- they are not going to be addressed in writing. They are not going to be addressed one by one on the record. The case was terminated when it was- when I entered the order last fall. And I am not going to reconsider that.

"Am I right? I think I am right. Am I- do I know I am right? No, not at all. ...

"I could be wrong. And under our system, you know, that is what the Court of Appeals sits there to do, as far as I know."

APPEARANCE OF COERCED COURT

7. Even though, again, the order says, or seems to say, all filings in the case have been carefully reviewed, there is one, nevertheless, that was not reviewed at all. That is, there is one "filing" that was not even filed. By FRAP 27(a)(4) Mineta had seven days to file a reply to Wendt's response on November 16, due on November 23. The order was issued, however, on November 20, four days earlier, precluding his reply.

8. This would, in itself, be of no great moment, except that Wendt's response cited three separate, sufficient reasons for rejecting the government's attempt to slam the courthouse door with completely ill-begotten, mendacious, technical sophistry. It further posed the question, if the government has nothing on the table, what does it have under the table? It then cited Lord v. Kelley, 240 F. Supp, 167, 169 and State Bar of Nevada v. Claiborne, 104 Nev. 115, 756 P.2d 464 (1988) on the government holding coercive power over judges'

heads. One would expect the government's response to be of some interest. It was precluded three days before it was due, however, by the order of November 20, an order giving the government everything it wants, but giving the uninitated absolutely no idea what the case is about, an order based only on "unreflective reliance" and "inarticulable intuitions," uncritical and arbitrary at best, craven and supine at worst, without visible means of support.

9. It would have been far better form on the Court's part to at least wait for the government's reply, at the very least for the sake of appearance, if only to avoid some appearance of caving in to a baseless motion to slam the courthouse door. Again, justice must have the appearance of justice, Marshall v. Jerrico, Inc., 446 U.S. 238, 243.

10. *"[i]t is gratuitous cruelty to put counsel through the exercise of writing briefs... when the outcome is foredoomed,"* as Mineta's motion quotes Mather v. Village of Mundelein, 869 F.3d 356, 358, also cited in the order. Foredoomed by what? If foredoomed by law and facts, set forth in an adequate lower court decision, then there is no proper objection. Neither the government nor the Court have in any way, however, have had the sheer gall to actually call the lower court order adequate, even if summarily affirming an order that admits its own inadequacy. If foredoomed by anything else, however, then the judicial process is indeed abandoned, as Wendt argued on other grounds (brief, pp15-24, ¶¶63-86). The process of a coerced court is, of course, void. Moore v. Dempsey, 261 U.S. 86, as Wendt's response noted, ¶19.

11. Due process requires not only an impartial adjudicator, but the appearance of one. Marshall v. Jerrico, Inc., 446 U.S. 238, 243. It is likewise incompatible with the "badges of fraud" in this case, a concept not yet applied to fraud upon the court, to Wendt's knowledge, but it is a precedent waiting to be set. Even though the order says the issues that could be raised are insubstantial, ignoring those already raised, it creates most substantial issues of its own.

CONSTITUTIONAL QUESTIONS IGNORED

12. Neither trial nor appellate court nor the

government has yet addressed, much less disputed, (1) Wendt's citation of the other side's own description of a federal program for federal funding of local projects, nor (2) Wendt's citation of U.S. v. Butler, 297 U.S. 1, holding the federal government has no authority to fund local projects. Likewise unaddressed is Wendt's claim of standing under Flast v. Cohen, 392 U.S. 83, 102-103, that Butler sets forth a specific prohibition upon which standing can be based. Wendt's brief, pp6-9, ¶¶33-43. This is sufficient for a narrow, legalistic decision that the program is unconstitutional and settle the case. For added perspective, there is further argument (pp9-12, ¶¶44-51), that the program debases the political process, leaves Wendt liable for projects beyond any humanly possible informed decision-making on his part, and subjects him to taxation without representation.

13. If there is any agreement among the parties and the Court, it is that no further briefing is needed. Just because no further briefing is needed, however, there is no reason for not ruling on matters already briefed and no reason for summarily affirming a lower court decision that admittedly did not address the issues presented.

14. The order refers to insubstantial issues, unworthy of further consideration, never mind even Mineta's own ¶9, listing the very substantial issues in Wendt's brief:

"... federal funding of local mass transit projects is unconstitutional; he had standing as a taxpayer to challenge federal funding; the political process is debased by federal funding; there is a federal responsibility for informed decision making; the quality of urban life is a justiciable question; and, finally, that the court abandoned the judicial process by failing to address Wendt's citations of allegedly (SIC!) binding authority. Wendt Br. at 2-24."

15. Thus there is no dispute there is a constitutional issue before the Court, once Mineta's technical sophistry is peeled away, with not the slightest suggestion of a possible resolution other than a constitutional ruling. The Supreme Court has held time and time again that the courts have a most solemn obligation to rule on constitutional issues in cases that

cannot be settled any other way. Even before the Constitution was ratified, Federalist 78 said, in part:

"There is no position which depends on clearer principles than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void....

"... The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of the agent."

16. Courts have solemn duties *"to say what the law is"* and to give effect to the constitution when necessary, or else we simply do not have a constitution. Marbury v. Madison, 1 Cranch. 137, 177, 178-179. It is a sworn duty of judges, Hepburn v. Griswold, 75 U.S. (8 Wall.) 603, 612. That is, even if harsh consequences might result:

"It is the high duty and function of this court in cases regularly brought to its bar to decline to recognize or enforce seeming laws of Congress, dealing with subjects not intrusted to Congress, but left or committed by the supreme law of the land to the control of the states. We cannot avoid the duty, even though it require us to refuse to give effect to legislation designed to promote the common good. The good sought in unconstitutional legislation is an insidious feature, because it leads citizens and legislators of good purpose to promote it, without thought of the serious breach it will make in the ark of our covenant, or the harm which will come from breaking down recognized standards. In the maintenance of local self-government, on the one hand, and the national power, on the other, our country has been able to endure and prosper for near a century and a half." Bailey v. Drexel Furniture Co., 259 U.S. 20,

"... But, should it work hardship to individuals, that by no means warrants the violation of a plain and emphatic provision of the constitution. The liberty of the citizen and his security in all his rights, in a large degree depend upon a rigid adherence to the provisions of the constitution and the laws, and their faithful performance. If courts, to avoid hardships, may disregard and refuse to enforce their provisions, then the security of the citizen is imperiled. Then the will, it may be the unbridled will, of the judge, would usurp the place of the constitution and the laws, and the violation of one provision is liable to speedily become a precedent for another, perhaps more flagrant, until all constitutional and legal barriers are destroyed, and none are secure in their rights. Nor are we justified in resorting to strained construction or astute interpretation, to avoid the intention of the framers of the constitution, or the statutes adopted under it, even to relieve against individual hardships. If unwise or hard in their operation, the power that adopted can repeal or amend, and remove the inconvenience. The power to do so has been wisely withheld from the courts, their functions only being to enforce the laws as they find them enacted." Law v. People, 87 Ill. 895; Lake County v. Rollins, 130 U.S. 662, 673

17. U.S. v. Brown, 381 U.S. 437, 461, cited more of Federalist 78 to hold:

"This Court is always reluctant to declare that an Act of Congress violates the Constitution, but in this case we have no alternative. As Alexander Hamilton observed:

"'By a limited constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no ex post facto *laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of the courts of justice; whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.'"*

18. In the same vein Jean v. Nelson, 472 U.S. 846, 854 (1985), held:

"... Of course, the fact that courts should not decide constitutional issues unnecessarily does not permit a court to press statutory construction 'to the point of disingenuous evasion' to avoid a constitutional question."

DUE PROCESS FORGOTTEN

19. Not only does stare decisis limit the discretion of the courts, Wendt's brief, pp15-24, ¶¶63-86, but also the requirements of constitutional adjudication, Lake County v. Rollins, above, and the requirements of due process. That is, at least in theory, but certainly not in Wendt's experience. In Wendt's experience courts exercise the discretion to turn the law into a collection of excuses for whatever. Wendt has yet to see his side of a case fairly represented in a court decision; so far it has always been reduced to a straw man, easily knocked down. Wendt has never gotten more than fifteen minutes in court, this case merely being the latest, and most blatant, example. If no court has yet expressly claimed the discretion to turn the law into silly putty, that sort of unbridled discretion is all Wendt has ever gotten out of the courts.

20. The history of Wendt's state litigation is set forth in the complaint in Wendt's previous case in this Court, Wendt, v. Univ. of Illinois, et.al., No. 99-3409, only to be denounced in the order as a "long-winded narrative assault." That order upheld the dismissal on a hoked-up "Rooker-Feldman doctrine" that has precious little to do with either Rooker or Feldman, as Wendt has often complained at length. In this case, however, taking this "tradition" to new heights, both trial and reviewing courts exercise an unbridled discretion to simply ignore a clear-cut, so far undisputed, constitutional question.

21. Wendt's "rambling diatribe against the judiciary," brief, *ibid,*, as Mineta termed it, motion, ¶11, complained of the trial court ignoring (allegedly, of course!) binding authority as a violation of stare decisis. Selective binding authority such as that is also a violation of due process for much the same reasons, not necessarily in constitutional issues alone. Both, however, limit judicial discretion:

"The vague contours of the Due Process Clause do not leave judges at large. We may not draw on our merely personal and private notions and disregard the

limits that bind judges in their judicial function. Even though the concept of due process of law is not final and fixed, these limits are derived from considerations that are fused in the whole nature of our judicial process... These are considerations deeply rooted in reason and in the compelling traditions of the legal profession. The Due Process Clause places upon this Court the duty of exercising a judgment, within the narrow confines of judicial power in reviewing State convictions, upon interests of society pushing in opposite directions." Rochin v. People of California, 342 U.S. 165, 170

22. Like the law of physics that two bodies cannot occupy the same space at the same time, discretion and duty are mutually exclusive. The duty described above, the most profound of an American court, places clear, definite limits on discretion, as does duty in general:

"As to defendants' repeated references to the fact that we are dealing with an area of discretion, we need only note the words of Chief Justice Marshall:

"'Courts are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; and, when, that is discerned, it is the DUTY of the court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge; always for the purpose of giving effect to the will of the legislature; or, in other words, to the will of the law.' Osborn v. Bank of the United States, et. al. 9 Wheat. (22 U.S.) 738, 866, 6 L. Ed. 204 (1824) (emphasis added in decision)'

"The word discretion is limited by the duty to follow the law and such a blanket pattern of discrimination as is here alleged cannot be said to conform to such a duty. A discretionary action is subject to review and reversal for abuse of discretion. 'And by abuse of discretion is meant action which is arbitrary, fanciful, or clearly unreasonable.' United States v. McWilliams, 82 U.S. App.D.C. 259, 163 F.2d 695, 697 (1947). For us to find that the acts and failures to act alleged in the complaint do not constitute an abuse of discretion, we would have to say that they do not constitute 'arbitrary action.' Burns v. United States, 287

U.S. 216, 223 (1932), and this we can only do by ignoring the mandates of equal protection of the laws." Littleton v. Berbling, *468 F.2d 389, 412 (1972)*

23. Even due process, however, cannot itself become the tool of judges' preferences:

"... By extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action. We must therefore 'exercise the utmost care whenever we are asked to break new ground in this field,' (U.S. cite), lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court, (U.S. plurality cite)." Washington v. Glucksberg, 521 U.S. 702, 720.

24. It takes a "day in court" to establish due process and suitably limit judicial discretion, not the fifteen minutes accorded Wendt so far. If "day in court" has yet to be defined by the Supreme Court in so many words, two appellate courts have offered this formulation, one that requires questions to be addresseed and laws applied. In Bartlett v. Bowen, 816 F.2d 695, 706-707, (D.C. Cir. 1987), the District of Columbia Circuit succinctly described the judiciary's role under the separation of powers doctrine, which comes close to defining "day in court":

"'Since Marbury v. Madison, 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803), the Supreme Court has interpreted the Constitution to give to the judiciary an important role in the structure of the government. First, federal courts fulfill their role ONLY by adjudicating cases or controversies before them. Second, when faced with a proper case or controversy, courts, both state and federal, ***must apply all applicable laws in rendering their decisions****. Third, courts have a duty to uphold the Constitution. Fourth, a law contrary to the Constitution may not be enforced. Last, a final judgment by a court is binding and must be enforced...."* (Caps emphasis in original, bold added) Painter v. Shalala, 97 F.3d 1351, 1359 (10th Cir. 1996)

25. The footnote to the second point on applying law cited Marbury and Testa v. Katt, 330 U.S. 386, which held at 394 that a state could not deny enforcement of claims growing out of a valid federal law. This is a point

that could well use further reinforcement by the Supreme Court, if not by this one. Even that alone might not stop the practice of selective binding authority, deeply entrenched by Wendt's observation, but it would be most certainly better than nothing.

26. In that same general vein, Billington v. Underwood, 613 F.2d 91, 95 likewise summarized Supreme Court holdings on a due process requirement,

"... The very notion of a hearing, however informal, connotes that the decision maker will listen to the arguments of both sides before basing a decision on the evidence and legal rules adduced at the hearing..." (four U.S. citations),

thus raising a question for this discussion: How anyone is to know whether the decision-maker has listened to both sides of the case, especially if one side of the case is reduced to a straw man or just not mentioned at all?

27. *"... The touchstone of due process is protection of the individual against arbitrary action of government. (U.S. citation)"* Wolf v. McDonnell, 418 U.S. 539, 558. Thus arbitrary or capricious action, a classic example being the order of November 20, 2001, opens even a state proceeding to federal court interference:

"... The action of the court followed a fair hearing, and there is no pretense that the challenged views were adopted in order to evade a constitutional issue. We cannot interfere, unless the judgment amounts to a mere arbitrary or capricious exercise of power, or is in clear conflict with those fundamental 'principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights.' (U.S. citations)" American Ry. Express Co. v. Commonwealth of Kentucky, 273 U.S. 269, 273

28. It is simply not a judicial determination without the opportunity to be heard, indeed not a judicial act, but usurpation and oppression:

"It is a rule as old as the law that no one shall be personally bound until he has had his day in court, by which is meant until he has been duly cited to appear and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination. It is judicial usurpation and oppression, and can never be

upheld where justice is justly administered." Galpin v. Page, 18 Wall. (U.S.) 350, 21 L.Ed. 959

29. The whole point of a court system is to resolve disputes and minimize the peril of unresolved disputes. How then are disputes to be resolved by edicts from Mt. Olympus with no regard to the actual grievances? How is there to be "peace between the former adversaries," Homola v. McNamara, 59 F.3d 647, 648 (7th Cir. 1995), if one side is simply stonewalled, as Wendt has been, time and time again? Again, Hitler, Mao, Castro and Khomeini all rode to power on very legitimate grievances and no less than Osama bin Laden seeks to exploit a few of his own. As a real world bit of history, Frederic S. Zuckerman, The Tsarist Secret Police in Russian Society, 1880-1917, New York Universty Press, 1996, p242, said of the failure of the Tsar's failure to listen, which ought to be a pointed lesson to the court system in this country:

"... The political police had long known that even the starkest horrors, including the events of the 1905 Revolution, could not undermine the tsar's endless capacity for self-delusion which within the obscurantism of the court became more pronounced during the monarchy's last years. The tsar's mind was closed and neither ministers of internal affairs such as Maklakov and Protopopov, nor all of the intelligence surveys compiled by the various branches of the political police and gendarmes could pry it open..."

NO RES JUDICATA

30. One requirement for res judicata is a decision on the merits of the case, Fayyumi v. City of Hickory Hills, 18 F. Supp. 2d 909, a law review article of sorts, clarifies recent Illinois holdings on res judicata in relation to *Rooker Feldman*. For all the fine distinctions, BOTH require a decision on the merits, *id.*, 918, directly citing Torcasso v. Standard Outdoor Sales, 157 Ill.2d 484, 490, that a decision on the merits is conclusive and constitutes the bar. There is simply no decision on the merits in this matter, on trial or review, therefore no bar to relitigation. There is not even a dismissal on the jurisdictional questions, since the arguments have yet to be addressed.

JUDICIAL IMMUNITY ABANDONED

31. The judicial process is application of law to facts. Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 226, District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 477: *"A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist..."* There has been no application of law to facts in this matter, therefore no judicial process. Neither has there been the slightest appearance of fearless, independent decision-making, but exactly the opposite. Wendt has already argued in his brief, *ibid.*, that selective binding authority abandons not only the judicial process, but judicial immunity for any judges sued over it.

32. As Wendt argued in the previous case in this Court (Wendt v. Univ. of Ill., et. al., No. 99-3409, reply brief, ¶20) judicial immunity is a common law rule with an elaborate rationale, the principal consideration being protection of the public. Wendt had previously argued this in his Motion for Reconsideration in the Supreme Court of Illinois:

"19) The plaintiff has actually heard of the defense of judicial immunity, both, actually, of the rule and of the rationale, just in case anyone is wondering. The rule, in short, is that whatever a judge does within his proper discretion is immune from lawsuit. The rationale, in short, is that judges have to be free to discharge their duties fearlessly. They were set forth succinctly in Pierson v. Ray, 386 U.S. 547, 553-554 (1966):

"'Few doctrines were more solidly established at common law than the immunity of judges for acts committed within their judicial discretion, as this Court recognized when it adoped the doctrine, in Bradley v. Fisher, 13 Wall. 335 (1872). This immunity applies even when the judge is accused of acting maliciously and corruptly, and "it is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences" (Scott v. Stansfield, L.R. 3 Ex. 220, 223 (1868), quoted in Bradley v. Fisher, supra, 349, note, at 350.) It is a judge's duty to decide all cases within his jurisdiction that are brought before him,

including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden would not contribute to principled and fearless decision-making but to intimidation.' ...

"21) In other words, shirking duty is not within the discretion of the court, nor within the protection of judicial immunity. Judicial immunity is designed to protect a courageous freedom to decide, for the protection of the public, not a cowardly refusal to decide that could destroy the constitution. How anyone can say that the present ruling, which is, for all practical purposes, nothing more than that the plaintiff is something less than an impregnable legal draftsman, unable to sustain the complaint in every single paragraph, offers the public any protection is somewhat beyond him, although he has certainly learned not to underestimate lawyerly imagination. Could Pontius Pilate claim judicial immunity, lawyerly imagination or not?

"22) As a common law rule, judicial immunity is subject to the principle of the common law that it is based on reason, that when the reason for a rule ceases, the rule ceases to have effect. *Cessante ratione legis, cessat ipsa lex.* See extensive discussion of this point, Funk v. U.S. 290 U.S. 371, 385-386. It would be hard for the Illinois judges to invoke judicial immunity regarding their conduct in this case without saying, *"We only make the rules. Other people follow them."* Next year being the 70th anniversary of Louis Brandeis' famous dissent, that when the government breaks the law, it invites everyman to break the law, Olmstead v. United States, 277 U.S. 438, 485, the timing will be nothing short of exquisite."

33. The previous paragraph of that same reply brief, ¶19, lends itself well to the issues here, with some slight editing. The Pierson citation also states a purpose of principled, fearless, unintimidated decision making. Where is there the faintest resemblance of that in the ruling in question here? Not only did it studiously ignore constitutional issues, but it actually outdid the defendant in evading the issues, *"more royalist than the king."* Yet

again, "constitution be damned." By Sparks v. Duval County Ranch Co., Inc., 604 F.2d 976, 980, immunity is not to be extended any further than necessary to guarantee judicial independence. Again, there has not been even the slightest appearance of that in this case, above, ¶¶7-11. It thus would not extend to the judges at all, should Wendt eventually sue them.

34. Davis v. Passman, 442 U.S. 228, 246, (a Bivens action based on constitutional violation, as would be a lawsuit stemming from this action for violation of Wendt's 13th and 14th Amendments right to sue, brief, pp18-19, ¶¶72-73), set forth some nice theory, if not defeated by more selective binding authority:

"Our system of jurisprudence rests on the assumption that all individuals, whatever their position in government, are subject to federal law.

"'No man in this country is so high that he is above the law. No officer of the law may set the law at defiance with impunity. All officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it.'"

ADDITIONAL DISQUALIFICATION OF JUDGES

35. As justice must have the appearance of justice, sometimes judges not actually biased must be disqualified. Marshall v. Jerrico, Inc., 446 U.S. 238, 243. In a motion filed July 20, 2001 and denied without reason given August 13, 2001, Wendt objected to the participation of 7th Circuit judges in this matter stemming from *ultra vires* conduct in Wendt's previous case, Wendt v. Univ. of Ill., et. al., No. 99-3409, a matter yet to be addressed after Wendt's numerous protests. Perhaps there should be a rule disqualifying judges who simply do not respond to questions of *ultra vires* conduct. Why shouldn't judges explain the authority and validity of their conduct when the question arises? In any event, should there actually be a weakness of law or fact in Wendt's present case, the 7th Circuit has created a wretched enough appearance in Wendt's cases to date that it can hardly create a sufficient one to rule against him.

JUDICIAL SCANDAL INVITED

36. That staple of American political discourse,

"avoiding the third rail," stems from the instant electrocution of anyone coming in contact with the third rail that distributes electricity in rapid transit systems. In political terms it means avoiding heated issues that could readily add up to political suicide. That is far from a proper practice in the judicial process, however, when, as we see above, there are issues that have to be confronted. It is, ultimately, in the eyes of the law, a self-defeating practice.

37. A new term needs to be coined for this practice when attempted in the judicial process, one that just as vividly demands attention and likewise arouses the proper disgust for its impropriety. For that we might consult a staple of Chicago legal lore the past decade or so, the lawsuit against the Chicago Transit Authority, brought by the estate of a drunk who urinated on the third rail and was electrocuted. The point here is not the legal hocus-pocus. It is rather that direct bodily contact with the third rail is not necesssary for electrocution. It can be established otherwise (but not on the monorail, with its overhead, insulated, completely shielded power distribution) and in this instance it amply has been, several times over.

38. Defending the courts from charges of outlandish product liability awards, Carl T. Bogus, Why Lawsuits are Good for America: Disciplined Democracy, Big Business, and the Common Law, p27, says: *"(American Tort Reform Association's) capsulized description of* Vandevender v. Scheetz *is something of a work of art- literally true yet carefully crafted to create a false impression."* If indeed fair play demands the courts be defended from such attacks, it demands even more that courts do not engage in such attacks themselves. Wendt has yet to present a case in court that he has not gotten back as a "capsulized description," "carefully crafted" or not, but creating all sorts of false impressions nevertheless. In judicial terms this is urinating on the third rail.

39. Anything is legal in Chicago, as long as it does not make press. That cynical notion is strangely congruent with Homola, 648, the "diatribe" against relitigation that suggests all sorts of ways to correct

errors, with nary a hint that the original litigation might actually be invalid:

"... Now if the courts are unable to separate truth from fiction- the premise of this (never-say-die) attitude toward the results of litigation- one would suppose that the remedy lies in a political forum, or perhaps is an occasion for writing an expose`..."

40. If Wendt has to "take a hint" from all this, it is that there are very serious problems in the federal judiciary, which might take a major scandal to resolve. Let's hope the federal judiciary can take a hint before it undoes the credibility and authority that John Marshall established, or before it has to clear everything with Legality Maintenance Organizations. The dangers of taking that for granted might be gathered in the concurring opinion in Cooper v. Aaron, 358 U.S. 1, 23-24, quoting at length United States v. Mine Workers, 330 U.S. 258, 307-309, on the rule of law as the basis of civil order. It is high time, too, that more than precious few judges realize a properly placed sense of obligation is necessary for any legal system to function, which Wendt has had precious little occasion to discern in their conduct, one notable exception being:

"When the state through its laws seeks to override reasonable moral commitments it makes a dangerously uncharacteristic choice. The law grows from deposits of morality. Law and morality are, in turn, debtors and creditors of each other. The law cannot be adequately enforced by the courts alone, or by courts supported merely by the police and the military. The true secret of legal might lies in the habits of conscientious men disciplining themselves to obey the law they respect without the necessity of judicial and administrative orders. When the law treats a reasonable, conscientious act as a crime it subverts its own power. It invites civil disobedience. It impairs the very habits which nourish and preserve the law." U.S. v. Sisson, 297 F. Supp. 902, 910-

Wherefore William F. Wendt, Jr., plaintiff-appellant, pro se, petitions for rehearing en banc.

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